ITEM 11

TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11165.14, 11166, 11166.2, 11166.5, 11168, 11169, 11170, and 11174.3,
Including Former Penal Code Sections 11161.5, 11161.6, 11161.7

Statutes 1975, Chapter 226; Statutes 1976, Chapters 242 and 1139
Statutes 1977, Chapter 958; Statutes 1978, Chapter 136
Statutes 1979, Chapter 373; Statutes 1980, Chapters 855, 1071 and 1117
Statutes 1981, Chapters 29 and 435; Statutes 1982, Chapters 162 and 905
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Child Abuse and Neglect Reporting (01-TC-21)
Consolidated with
Interagency Child Abuse and Neglect (ICAN) Investigative Reports (00-TC-22)

San Bernardino Community College District, Claimant

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Jacqueline R. v. Alameda County Child Protective Services (2007) 155 Cal.App.4th 456 784

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"Child Abuse, Educator's Responsibilities," Crime and Violence Prevention Center, California Attorney General's Office, Sixth Edition, Revised January 2007 930

of California
MISSION ON STATE MANDATES
Ninth Street, Suite 300
amento, CA 95814
) 323-3562
M 2 (1/91)

For Official Use Only

EXHIBIT A

RECEIVED
JUN 28 2002
COMMISSION ON
STATE MANDATES

10:20 am.

TEST CLAIM FORM

Claim No. 01-TC-21

Local Agency or School District Submitting Claim

SAN BERNARDINO COMMUNITY COLLEGE DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates 5252 Balboa Avenue, Suite 807 San Diego, California 92117	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Raymond Eberhard, Business Manager
San Bernardino Community College District
114 S. Del Rosa Drive
San Bernardino, California 92408

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable. **Child Abuse and Neglect Reporting**

See: Attached

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
Raymond Eberhard Business Manager	(909) 382-4021 FAX: (909) 382-0174

Signature of Authorized Representative	Date
X	June 25 2002

Attached Exhibit to Form CSM; 2(2/91)
Test Claim Form
Test Claim of San Bernardino Community College District
Chapter 754, Statutes of 2001

Chaptered Bills:

Chapter 754, Statutes of 2001
Chapter 133, Statutes of 2001
Chapter 916, Statutes of 2000
Chapter 287, Statutes of 2000
Chapter 311, Statutes of 1998
Chapter 134, Statutes of 1997
Chapter 83, Statutes of 1997
Chapter 1090, Statutes of 1996
Chapter 1081, Statutes of 1996
Chapter 1080, Statutes of 1996
Chapter 1263, Statutes of 1994
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Chapter 931, Statutes of 1990
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Chapter 269, Statutes of 1988
Chapter 39, Statutes of 1988
Chapter 1459, Statutes of 1987
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Chapter 1418, Statutes of 1987
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Chapter 640, Statutes of 1987
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Chapter 1423, Statutes of 1984
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Chapter 1071, Statutes of 1980
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Chapter 373, Statutes of 1979
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Chapter 226, Statutes of 1975

Code Sections:

Penal Code Section 273a
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Penal Code Section 11161.6
Penal Code Section 11161.7
Penal Code Section 11164
Penal Code Section 11165
Penal Code Section 11165.1
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Penal Code Section 11165.3
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Penal Code Section 11165.5
Penal Code Section 11165.6
Penal Code Section 11165.7
Penal Code Section 11165.9
Penal Code Section 11165.14
Penal Code Section 11166
Penal Code Section 11166.5
Penal Code Section 11168
Penal Code Section 11174.3

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605
Fax: (858) 514-8645

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	No. CSM. 01-TC-21
San Bernardino Community College District Test Claimant.	Chapter 754, Statutes of 2001 Chapter 133, Statutes of 2001 Chapter 916, Statutes of 2000 Chapter 287, Statutes of 2000 Chapter 311, Statutes of 1998 Chapter 134, Statutes of 1997 Chapter 83, Statutes of 1997 Chapter 1090, Statutes of 1996 Chapter 1081, Statutes of 1996 Chapter 1080, Statutes of 1996 Chapter 1263, Statutes of 1994 Chapter 1253, Statutes of 1993 Chapter 510, Statutes of 1993 Chapter 346, Statutes of 1993 Chapter 459, Statutes of 1992 Chapter 1102, Statutes of 1991 Chapter 132, Statutes of 1991 Chapter 1603, Statutes of 1990 Chapter 931, Statutes of 1990 Chapter 1580, Statutes of 1988 Chapter 269, Statutes of 1988 Chapter 39, Statutes of 1988 Chapter 1459, Statutes of 1987 Chapter 1444, Statutes of 1987 Chapter 1418, Statutes of 1987 (Continued on next page)
	Child Abuse and Neglect Reporting
	TEST CLAIM FILING

Chapter 1020, Statutes of 1987
Chapter 640, Statutes of 1987
Chapter 1289, Statutes of 1986
Chapter 248, Statutes of 1986
Chapter 1598, Statutes of 1985
Chapter 1572, Statutes of 1985
Chapter 1528, Statutes of 1985
Chapter 1420, Statutes of 1985
Chapter 1068, Statutes of 1985
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Chapter 435, Statutes of 1981
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Chapter 1071, Statutes of 1980
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Chapter 958, Statutes of 1977
Chapter 1139, Statutes of 1976
Chapter 242, Statutes of 1976
Chapter 226, Statutes of 1975

Penal Code Sections 273a, 11161.5, 11161.6, 11161.7, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.14, 11166, 11166.5, 11168 and 11174.3

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." San Bernardino Community College District is a "school district" as

defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

Legal Requirements Prior to 1975

Penal Code Section 273a[2] provided that any person who willfully causes or permits any child to suffer, inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of a child willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered shall be punished by imprisonment for the specified term. Penal Code Section 11161.5[3] provided that in any

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[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools.

[2] Penal Code Section 273a, added by Chapter 568, Statutes of 1905, as amended by Chapter 697, Statutes of 1965, Section 1:

"(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits that child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in a situation that its person or health may be endangered, is guilty of a misdemeanor."

[3] Penal Code Section 11161.5, added by Chapter 576, Statutes of 1963, Section 1, as amended by Chapter 348, Statutes of 1974, Section 1:

"(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent,

case in which a minor was observed by any registered nurse when in the employ of a

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any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center or social worker from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department."

school district, or any superintendent, supervisor of child welfare and attendance, principal, teacher, or certificated pupil personnel employee of any public or private school system, and it appeared to the registered nurse, school superintendent, certificated pupil personnel employee, school principal or teacher that the minor had physical injury or injuries which appeared to have been inflicted upon him by other than accidental means by any person, that the minor had been sexually molested, or that any injury prohibited by the terms of Section 273a had been inflicted upon the minor, he or she was required to report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report was required to state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Penal Code Section 11161.7[4] provided for the adoption and use of forms to be used by professional medical personnel when reporting incidents described in section 11161.5.

Legal Requirements After 1974

Chapter 226, Statutes of 1975, Section 1 amended Penal Code Section 11161.5[5]

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[4] Penal Code Section 11161.7, added by Chapter 836, Statutes of 1974, Section 2:

(a) The Department of Justice shall prescribe by regulation, a form which may be used by reporting professional medical personnel in making reports required to be made pursuant to Section 11161.5.

(b) As used in this section 'professional medical personnel' means a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, and registered nurse.

(c) Failure by professional medical personnel to use such form in reporting an incident of possible child abuse shall not constitute a violation of Section 11162.

[5] Penal Code Section 11161.5, added by Chapter 576, Statutes of 1963, Section 1, as amended by Chapter 226, Statutes of 1976, Section 1:

"(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination

or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center or social worker from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made with malice.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report

to require proof of malice as a prerequisite to imposing civil or criminal liabilityas a result of making any report authorized by Section 11161.5.

Chapter 226, Statutes of 1975, Section 2 added Penal Code Section 11161.6[6] to permit probation officers to report child abuse as defined in Section 11161.5.

Chapter 242, Statutes of 1976, Section 1 amended Penal Code Section 11161.5[7]

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is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department."

[6] Penal Code Section 11161.6, added by Chapter 226, Statutes of 1975, Section 2:

"In any case in which a minor is observed by a probation officer and it appears to the probation officer from observation of the minor that the minor has a physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he may report such injury to the agencies designated in Section 11161.5.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made with malice."

[7] Penal Code Section 11161.5, added by Chapter 576, Statutes of 1963, Section 1, as amended by Chapter 242, Statutes of 1976, Section 1:

"(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center or social worker from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

to require proof of a false report as well as proof that the person making the report knew or should have known the report was false as a condition precedent to imposing civil or criminal liability as a result of making any report authorized by Section 11161.5.

Chapter 242, Statutes of 1976, Section 2 amended Penal Code Section 11161.6[8]

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section ~~unless it can be proven that a false report was made with malice~~ unless it can be proven that a false report was made and the person knew or should have known that the report was false.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department."

[8] Penal Code Section 11161.6, added by Chapter 226, Statutes of 1975, Section 2 and last amended by Chapter 242, Statutes of 1976, Section 2:

" In any case in which a minor is observed by a probation officer or any person other than a person described in Section 11161.5 and it appears to the probation officer or person from observation of the minor that the minor has a physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a

to permit any other person, in addition to those described in Section 11161.5, to report suspected cases of child abuse to the specified agencies.

Chapter 1139, Statutes of 1976, Section 165 amended Penal Code Section 273a[9] to make technical changes and to remove references to state prison term limits.

Chapter 958, Statutes of 1977, Section 1 amended Penal Code Section 11161.5[10] to add marriage, family or child counselors, psychologists, peace officers,

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has been inflicted upon the minor, he may report such injury to the agencies designated in Section 11161.5.

No probation officer or person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the probation officer or person knew or should have known that the report was false."

[9] Penal Code Section 273a added by Chapter 568, Statutes of 1905 as amended by Chapter 1139, Statutes of 1976, Section 165:

"~~(a)~~ (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison ~~for not less than 1 year nor more than 10 years~~.

~~(b)~~ (2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor."

[10] Penal Code Section 11161.5, added by Chapter 576, Statutes of 1963, Section 1, as amended by Chapter 958, Statutes of 1977, Section 1:

"(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public

and probation officers to the list of persons required to report observations of child

or private summer day camp or child care center, or by any social worker, by any peace officer, or by any probation officer, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center, ~~or~~ social worker, peace officer, or probation officer, from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the person knew or should have known that the report was false.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department."

abuse.

Chapter 958, Statutes of 1977, Section 2 amended Penal Code Section 11161.7[11] to require the Department of Justice to establish the reporting forms to be used by professional medical personnel in cooperation with the State Office of Child Abuse Prevention.

Chapter 136, Statutes of 1978, Section 1 amended Penal Code Section 11161.5[12] to grant immunity to persons taking photographs of a suspected victim of

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[11] Penal Code Section 11161.7, added by Chapter 836, Statutes of 1974, Section 2 and amended by Chapter 958, Statutes of 1977, Section 2:

"(a) The Department of Justice ~~shall prescribe by regulation~~ in cooperation with the State Office of Child Abuse Prevention, shall adopt and cause to be printed, for dissemination through the various county welfare departments, a form which ~~may~~ shall be used by reporting professional medical personnel in making reports required to be made pursuant to Section 11161.5.

~~(b) As used in this section 'professional medical personnel' means a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, and registered nurse.~~

(b) Failure by professional medical personnel to use such form in reporting an incident of possible child abuse shall not constitute a violation of Section 11162."

[12] Penal Code Section 11161.5, added by Chapter 576, Statutes of 1963, Section 1, as amended by Chapter 136, Statutes of 1978, Section 1:

"(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, by any peace officer, or by any probation officer, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center, or social worker, peace officer, or probation officer, from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor,

child abuse without parental consent.

Chapter 373, Statutes of 1979, Section 251 amended Penal Code Section

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he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the person knew or should have known that the report was false.

No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department."

11161.5[13] to make technical changes.

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[13] Penal Code Section 11161.5, added by Chapter 576, Statutes of 1963, Section 1, as amended by Chapter 373, Statutes of 1979, Section 251:

"(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, by any peace officer, or by any probation officer, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center, or social worker, peace officer, or probation officer, from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the person knew or should have known that the report was false.

No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a

Chapter 855, Statutes of 1980, Section 1 amended Penal Code Section 11161.5[14] to add optometrists to the list of persons required to report child abuse,

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upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section ~~600~~ 300 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section ~~576.5~~ 272 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department."

[14] Penal Code Section 11161.5, added by Chapter 576, Statutes of 1963, Section 1, as amended by Chapter 855, Statutes of 1980, Section 1:

"In any case in which ~~a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee or any public or private school system or any principal of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, by any peace officer, or by any probation officer, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, religious practitioner, registered nurse, school superintendent, supervisor, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, administrator of a public or private summer day camp or child care center, social worker, peace officer, or probation officer, from observation of the minor that the minor has~~ any person coming within the provisions of subdivision (c) acquires in his or her professional capacity reasonable cause to believe that a minor has physical injury or injuries which appear to have been inflicted upon him or her by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he or she shall report such fact by telephone and in writing, withing 36 hours, to both the local police authority having jurisdiction and to the

juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his or her whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him or her by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he or she shall file a report without delay with the local police authority having jurisdiction and with the juvenile probation department as provided in this section.

No person ~~shall incur any civil or criminal liability as a result of making any report authorized by this section~~ required by this section to make a report shall incur any civil or criminal liability as a result of making such report. No other person making a report of child abuse or molestation shall incur any civil or criminal liability as a result of making the report unless it can be proven that a false report was made and that the person knew or should have known that the report was false.

No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to all of the following: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his or her patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 300 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 272 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) shall be made to the county welfare department

(c) The provisions of subdivision (a) are applicable to all of the following persons:

as well as amending Section 11161.5 to make technical changes.

Chapter 1071, Statutes of 1980, Sections 1, 2, and 3, repealed Penal Code Sections 11161.5, 11161.6, and 11161.7.

Chapter 1117, Statutes of 1980, Section 4 amended Penal Code Section 273a[15] to specify possible state prison terms for a violation of Section 273a.

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(1) Physicians and surgeons.
(2) Dentists and dental hygienists.
(3) Residents and interns.
(4) Podiatrists.
(5) Chiropractors.
(6) Optometrists.
(7) Persons licensed as marriage, family, and child counselors pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the Business and Professions Code.
(8) Psychologists.
(9) Religious practitioners.
(10) Registered nurses.
(11) Superintendents, supervisors of child welfare and attendance, and certificated pupil personnel employees of any public or private school.
(12) Teachers and principals of any public or private school.
(13) Licensed day care workers.
(14) Administrators of public or private summer day camps or child care centers.
(15) Social workers.
(16) Peace officers.
(17) Probation officers.
(18) Priests, ministers, or rabbis or any religious denomination.

[15] Penal Code Section 273a added by Chapter 576, Statutes of 1963, Section 1 as amended by Chapter 1117, Statutes of 1980, Section 4:

"(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 3, or 4 years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor."

Chapter 1071, Statutes of 1980, Section 4 added Article 2.5 to Chapter 2 of Title 1 of Part 4 of the Penal Code (Penal Code sections 11165 through 11174). Section 11165[16] provides the definitions of terms relevant to child abuse and child abuse

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[16] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 261.5 (unlawful sexual intercourse), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent failure of a person having the care or custody of any child to protect a child from severe malnutrition or medically diagnosed nonorganic failure to thrive. For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in such situation that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of suspected physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

reporting used throughout the Article. Subdivision (a) defines a "child" to mean a person under the age of 18 years. Subdivision (b) for the first time defines "sexual assault" to include Penal Code Sections 261 (rape), Section 261.5 (unlawful sexual intercourse), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), Section 288a (oral copulation), and Section 289 (penetration of a genital or anal opening by a foreign object). Subdivision (c) of Penal Code Section 11165 defines "neglect" as the negligent failure of a person having the care or custody of any child to protect a child from severe malnutrition or medically diagnosed nonorganic failure to thrive. Subdivision (d) defines "willful cruelty or the unjustifiable punishment of a child" to include unjustifiable physical pain and mental suffering, or willfully causing or permitting the person or health of a child to be placed in such situation that his or her person or health is endangered. Subdivision (e) for the first time defines "corporal punishment or injury" to mean a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. Subdivision (f) defines "abuse in out-of-home care" to mean situations of suspected physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency. Subdivision (g) continues to define "child abuse"

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department."

as physical injury which is inflicted by other than accidental means on a child by another person and any act or omission proscribed by Section 273a. For the first time "Child abuse" is also defined to include the sexual assault of a child or the neglect of a child. Subdivision (h) defines "child care custodians" to include teachers, administrative officers, supervisors of child welfare and attendance, certificated pupil personnel employees of any public or private school, and others.

Penal Code Section 11166[17] subdivision (a) requires "child care custodians"

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[17] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4:

"(a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she reasonably suspects has been the victim of child abuse shall report such suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or its emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any other person who had knowledge of or observes a child whom he or she reasonably suspects has been a victim of child abuse may report such suspected instance of child abuse to a child protective agency.

(d) When two or more persons who are required to report are present and jointly have knowledge of a suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make such report.

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

(f) A county probation or welfare department shall immediately or as soon as practically possible report by telephone every instance of suspected child abuse as defined in Section 11165 reported to it to the law enforcement agency having jurisdiction over the

which, by definition, includes teachers, administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private schools to report "child abuse" to a "child protective agency". Therefore, for the first time, child care custodians were required to report suspected cases of "sexual assault" defined to include rape (Penal Code Section 261), unlawful sexual intercourse (Penal Code Section 261.5), rape in concert (Penal Code Section 264.1), incest (Penal Code Section 285), sodomy (Penal Code Section 286), lewd or lascivious acts upon a child under 14 years of age (subdivisions (a) and (b) of Penal Code Section 288), oral copulation (Penal Code Section 288a), and penetration of a genital or anal opening by a foreign object (Section 289). Also for the first time, child care custodians were required to report suspected cases of "corporal punishment or injury" as defined in Penal Code Section 273d; and "neglect" as defined in subdivision (c) of Section 11165.

Section 11168[18] requires the written reports required by Section 11166 to be submitted on forms adopted by the Department of Justice and distributed by the child protective agencies. Therefore, for the first time child care custodians are required to submit their written reports on forms adopted by the Department of Justice and

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case, and to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and shall send a written report thereof within 36 hours or receiving the information concerning the incident to that agency.

A law enforcement agency shall immediately or as soon as practically possible report by telephone every instance of suspected child abuse reported to it to county social services and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and shall send a written report thereof within 36 hours of receiving the information concerning the incident to such agency."

[18] Penal Code Section 11168, added by Chapter 1071, Statutes of 1980, Section 4:

"The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Such forms shall be distributed by the child protective agencies."

distributed by the child protective agencies.

Chapter 29, Statutes of 1981, Section 1 amended subdivision (b) of Penal Code Section 11165[19] by removing Penal Code Section 261.5 (unlawful sexual intercourse)

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[19] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 29, Statutes of 1981, Section 1:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), ~~261.5 (unlawful sexual intercourse)~~, 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent failure of a person having the care or custody of any child to protect a child from severe malnutrition or medically diagnosed nonorganic failure to thrive. For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in such situation that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of suspected physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of

from the definition of "sexual assault."

Chapter 435, Statutes of 1981, Section 1 amended Penal Code Section 11165[20]

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the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department."

[20] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 435, Statutes of 1981, Section 1:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in ~~such~~ a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of ~~suspected~~ physical injury on a

to distinguish between the meaning of the terms "neglect," "severe neglect," and "general neglect" and amended subdivision (h) to add "licensing workers or licensing evaluators" to the definition of "child care custodian," as well as other technical changes.

Chapter 435, Statutes of 1981, Section 2 amended Penal Code Section 11166[21]

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child which is inflicted by other than accidental means, or of sexual ~~abuse~~ assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department."

[21] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4 as amended by Chapter 435, Statutes of 1981, Section 2:

"(a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report ~~such~~ the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

to make technical changes and to require child care custodians to report known and suspected instances of child abuse. Therefore, for the first time, persons required to report suspected instances of child abuse were required to report instances of both

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(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her ~~its~~ emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any other person who ~~had~~ has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or ~~such~~ suspected instance of child abuse to a child protective agency.

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

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

(f) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code every known or suspected instance of ~~suspected~~ child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. ~~reported to it to the law enforcement agency having jurisdiction over the case, and to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and shall send a written report thereof within 36 hours of receiving the information concerning the incident to that agency.~~

A law enforcement agency shall immediately or as soon as practically possible report by telephone ~~to county social services~~ the county welfare department and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of ~~suspected~~ child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision. ~~and shall send a written report thereof within 36 hours of receiving the information concerning the incident to such agency."~~

known and suspected child abuse to a child protective agency.

Chapter 905, Statutes of 1982, Section 1 amended Penal Code Section 11165[22]

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[22] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 905, Statutes of 1982, Section 1:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of

to add subdivision (l) to define "commercial film and photographic print processor."

Chapter 905, Statutes of 1982, Section 2 amended subdivision (c) of Section 11166[23] of the Penal Code to require "commercial film and photographic print

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a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[23] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 905, Statutes of 1982, Section 2:

"(a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or

processors" to report observations of negatives or slides depicting a child under the age

observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

~~(c)~~ (d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

~~(d)~~ (e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make such report.

~~(e)~~ (f) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

~~(f)~~ (g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

of 14 years engaged in an act of sexual conduct, as defined.

Chapter 1170, Statutes of 1984, Section 1 amended subdivision (i) of Section 11165[24] of the Penal Code to add a psychological assistant registered pursuant to

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[24] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1170, Statutes of 1984, Section 1:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child

Section 2913 of the Business and Professions Code to the meaning of "medical practitioner."

Chapter 1391, Statutes of 1984, Section 23 amended subdivision (i) of Section 11165[25] of the Penal Code to add any Emergency Medical Technician I or II,

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or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[25] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1391, Statutes of 1984, Section 23:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or

custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any Emergency Medical Technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; ~~a paramedic~~; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines,

paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code to the meaning of "medical practitioner."

Chapter 1391, Statutes of 1984, Section 24 made several changes to Penal Code Section 11165[26]. Subdivision (b) was amended to define "sexual abuse" to

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or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[26] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1391, Statutes of 1984, Section 24:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

~~(b)~~ (1) "Sexual assault" means conduct in violation of the following sections of ~~the Penal Code~~ this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed

nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual ~~assault~~ abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any Emergency Medical Technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, ~~or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code~~.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; ~~a paramedic~~; a

include "sexual assault" and "sexual exploitation." Subdivision (c)(1) was amended to define "severe neglect" to include the intentional failure of a person having the care or custody of a child to provide adequate medical care.

Chapter 1423, Statutes of 1984, Section 2 amended subdivision (2) of Section 273a[27] of the Penal Code to make technical changes.

Section 9 amended subdivision (g) of Section 11166[28] of the Penal Code to add

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marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[27] Penal Code Section 273a, added by Chapter 568, Statutes of 1905, as amended by Chapter 1423, Statutes of 1984, Section 2:

"(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, ~~3~~, 4 or ~~4~~ 6 years..

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor."

[28] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1423, Statutes of 1984, Section 9:

"(a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information

concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the

the district attorney's office to the list of persons to which county probation or welfare departments and law enforcement agencies are required to report every known or suspected instance of child abuse.

Chapter 1613, Statutes of 1984, Section 2 amended Penal Code Section 11165[29]

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information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department, and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

[29] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1613, Statutes of 1984, Section 2:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a

person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section ~~16508~~ 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, ~~any Emergency Medical Technician I or II, paramedic,~~

to make technical changes.

Section 2.2 amended subdivision (i) of Section 11165[30] of the Penal Code to add

~~or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.~~

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[30] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1613, Statutes of 1984, Section 2.2:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions

on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who

psychological assistants registered pursuant to Section 2913 of the Business and Professions Code to the definition of "medical practitioner."

Section 2.4 amended subdivision (i) of Section 11165[31] of the Penal Code to add

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treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[31] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1613, Statutes of 1984, Section 2.4:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed

nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any emergency medical technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code ~~or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code~~.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; ~~a paramedic~~; a

any emergency medical technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code to the meaning of "medical practitioner" and to remove psychological assistants registered pursuant to Section 2913 of the Business and Professions Code.

Section 2.6 amended subdivision (i) of Section 11165[32] of the Penal Code to add

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marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[32] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1613, Statutes of 1984, Section 2.6:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a

person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any emergency medical technician I or II, or

psychological assistants registered pursuant to Section 2913 of the Business and Professions Code to the meaning of "medical practitioner."

Chapter 1718, Statutes of 1984, Section 1 added Penal Code Section 11166.5[33]

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paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[33] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1:

"Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensed day care workers; administrators of community care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrist, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat

to require any person who enters into employment as a child care custodian to sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Penal Code Section 11166 and will comply with its provisions. Section 11166.5 also requires the cost of printing, distribution, and filing to these statements to be borne by the employer. Therefore, for the first time, employers of child care custodians are required to obtain written statements from child care custodians, incur the costs of printing, distribution, and the filing of the statements required.

Chapter 189, Statutes of 1985, Section 1 amended Penal Code Section 11165[34]

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minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing or these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in Section 11166.5 to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in Section 11166.5, the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

[34] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 189, Statutes of 1985, Section 1:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of the following sections ~~of the Penal Code~~: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and

Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person

to make technical changes and to add any person who is an administrator or presenter of, or an counselor in, a child abuse prevention program in any public or private school to the meaning of "child care custodian." Therefore, for the first time, any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school is a child care custodian required to report child abuse.

Chapter 464, Statutes of 1985, Section 1 amended Penal Code Section

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responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer, or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any emergency medical technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

11166.5[35] to make technical changes and to add subdivision (b) to require a state

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[35] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, as amended by Chapter 464, Statutes of 1985, Section 1:

"(a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensed day care workers; administrators of community care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrist, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing or these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies as members of the support staff or maintenance staff who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in Section 11166.5 to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in Section 11166.5, the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency

agency issuing a professional license or certificate to sign a statement substantially similar to the one contained in Section 11166.5.

Chapter 1068, Statutes of 1985, Section 2 added Penal Code Section 11165.3[36] to change the meaning the sexual exploitation given in Section 11165 of the Penal Code and to change the definition of abuse in out-of-home care made in Section 11165 so that it is applicable to acts of an administrator or an employer of a public or private home, school, or institution only when the home, school, or institution is a residential institution.

Chapter 1420, Statutes of 1985, Section 1 added Penal Code Section 11165.5[37]

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may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

[36] Penal Code Section 11165.3, added by Chapter 1068, Statutes of 1985, Section 2:

"(a) Notwithstanding the provisions of subparagraph (B) of paragraph (2) of subdivision (b) of Section 11165, on and after the effective date of this section, instead of the meaning given in that subparagraph sexual exploitation refers to any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(b) Notwithstanding the provisions of Section 11165, on and after the effective date of this section, the definition of abuse in out-of-home care made in that section is applicable to acts of an administrator or an employer of a public or private home, school, or institution only when the home, school, or institution is a residential institution. The definition is not applicable to an agency."

[37] Penal Code Section 11165.5, added by Chapter 1420, Statutes of 1985, Section 1:

"As used in Sections 11165 and 11166.5, "child care custodian," in addition to the persons specified therein, means an instructional aide, a teacher's aide, or a teacher's

to add to the definition of "child care custodian" instructional aides, a teacher's aide, or teacher's assistants employed by any public or private school who have been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education. The term "Child care custodian" was also amended to include a classified employee of any public school who has been trained in the duties imposed by this article if the school has so warranted to the State Department of Education. Therefore, for the first time, instructional aides, teacher's aides, teacher's assistants, and classified employees of any public or private school trained in the reporting duties imposed by this articles are included in the definition of "child care custodian," if the school district has so warranted to the State Department of Education.

Chapter 1528, Statutes of 1985, Section 2 amended subdivision (f) of Section 11165[38] of the Penal Code to add the term "corporal punishment or injury" to the

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assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education. It also includes a classified employee of any public school who has been trained in the duties imposed by this article if the school has so warranted to the State Department of Education."

[38] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1528, Statutes of 1985, Section 2:

"As used in this article:
(a) "Child" means a person under the age of 18 years.
(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:
(1) "Sexual assault" means conduct in violation of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).
(2) "Sexual exploitation" refers to any of the following:
(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).
(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in,

prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse, or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care or child day care facility, or the administrator or an employee of a public or private school ~~foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.~~

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

meaning of "abuse in out-of-home care," and to amend the meaning of the term "abuse in out-of-home care" to mean situations where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care or child day care facility, or the administrator or an employee of a public or private school. Section 2 also amended subdivision (h) to remove any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school from the meaning of "child care custodian."

Chapter 1528, Statutes of 1985, Section 2.5 amended subdivision (h) of Section 11165[39] of the Penal Code to add any person who is an administrator or presenter of, or

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(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer, ~~or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.~~

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, ~~or~~ any emergency medical technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[39] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1528, Statutes of 1985, Section 2.5:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully

a counselor in, a child abuse presentation program in any public or private school.

Chapter 1572, Statutes of 1985, Section 2 added Penal Code Section 11165.1[40]

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inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse, or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care or child day care facility, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer, or any person who is an administrator or presenter of, or a counselor in, a child abuse presentation program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, ~~or~~ any emergency medical technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[40] Penal Code Section 11165.1, added by Chapter 1572, Statutes of 1985, Section 2:

"In addition to those persons specified in the definition of "child care custodian" contained in Section 11165, the term also includes any person who is an administrator or presentor of, or a counselor in, a child abuse prevention program in any public or private

to add any person who is an administrator or presentor of, or a counselor in, a child abuse prevention program in any public or private school to the definition of "child care custodian."

Chapter 1598, Statutes of 1985, Section 5.1 amended Penal Code Section 11166.5[41] to make technical changes.

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school."

[41] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, as amended by Chapter 1598, Statutes of 1985, Section 5.1:

"(a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; ~~licensed day care workers; administrators of community care facilities licensed to care for children;~~ licensees, administrators, and employees of community care facilities or child day care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrist, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code or emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or psychological assistants registered pursuant to Section 2913 of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

Chapter 248, Statutes of 1986, Section 168 amended Penal Code Section 11166.5[42] to make technical changes.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing or these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies as members of the support staff or maintenance staff who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in Section 11166.5 to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in Section 11166.5, the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

[42] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, as amended by Chapter 248, Statutes of 1986, Section 168:

"(a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensees, administrators, and employees of community care facilities or child day care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists,

Chapter 1289, Statutes of 1986, Section 1 amended Penal Code Section 11165.5[43] to add subdivision (b) which provides that training in the duties imposed includes training in child abuse identification and training in child abuse reporting and includes a requirement that all trainees be provided with a written copy of the reporting

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dentists, residents, interns, podiatrist, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code or emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or psychological assistants registered pursuant to Section 2913 of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing or these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies as members of the support staff or maintenance staff who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in ~~Section 11166.5~~ subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in Section 11166.5, the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

[43] Penal Code Section 11165.5, added by Chapter 1420, Statutes of 1985, Section 1, as amended by Chapter 1289, Statutes of 1986, Section 1:

"(a) As used in Sections 11165 and 11166.5, "child care custodian," in addition to the persons specified therein, means an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education. It also includes a classified employee of any public school who has been trained in the duties imposed by this article if the school has so warranted to the State Department of Education.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights."

requirements and a written disclosure of the employees' confidentiality rights. Therefore, for the first time, employers who provide training to their employees are required to provide written copies of reporting requirements and a written disclosure of employees' confidentiality rights.

Section 2 amended subdivision (f) of Section 11166[44] of the Penal Code to

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[44] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1289, Statutes of 1986, Section 2:

"(a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

require internal child abuse reporting procedures established by employers not to require the reporting employee to disclose his or her identity to the employer.

Chapter 640, Statutes of 1987, Section 2, added Penal Code Section 11174.3[45]

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department, the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

[45] Penal Code Section 11174.3, added by Chapter 640, Statutes of 1987, Section 2:

"(a) Whenever a representative of a child protective agency deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child's home. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency shall inform the child of that right prior to the interview. The purpose of

which requires a member of the staff of a school, including any certificated or classified employee or volunteer aide, to be present, when a child requests him or her to be present, during an interview by a representative of a child protective agency investigating a report of suspected child abuse that occurred in the child's home. Therefore, for the first time, a representative of the school is required to inform that member of the staff, and the member requested is required to be present, when a child is being interviewed by a representative of a child protective agency.

Chapter 1020, Statutes of 1987, Section 1 amended subdivision (f) of Section 11165[46] of the Penal Code to include any facility responsible for a child's welfare that is

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the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible; however, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district, and each child protective agency shall notify each of its employees who participate in the investigation of reports of child abuse, of the requirements of this section."

[46] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1020, Statutes of 1987, Section 1:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of

Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse, or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care, ~~or~~ child day care facility, or any other facility licensed to care for children, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental

licensed to care for children to the definition of the term "abuse in out-of-home care."

Chapter 1418, Statutes of 1987, Section 9 amended subdivision (f) of Section 11165[47] of the Penal Code to remove "any facility licensed to care for children"

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means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer, or any person who is an administrator or presenter of, or a counselor in, a child abuse presentation program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any emergency medical technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[47] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1418, Statutes of 1987, Section 9:

"As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse, or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care or child day care facility, ~~or any other facility licensed to care for children,~~ or the administrator or an employee of a public

from the definition of "abuse in out-of-home care" and to amend subdivision (i) to add optometrists to the definition of "medical practitioner."

Chapter 1444, Statutes of 1987, Section 1.5 added Penal Code Section 11164[48] which required the Article to be known and cited as the "Child Abuse and Neglect

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or private school, or other institution or agency.

(g) "Child abuse" means the physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer, or any person who is an administrator or presenter of, or a counselor in, a child abuse presentation program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, ~~or~~ any emergency medical technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

[48] Penal Code Section 11164, added by Chapter 1444, Statutes of 1987, Section 1.5:

"(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse. In any investigation of suspected child abuse, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."

Reporting Act."

Chapter 1444, Statutes of 1987, Section 2 amended Penal Code Section 11165[49]

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[49] Penal Code Section 11165, added by Chapter 1071, Statutes of 1980, Section 4 and amended by Chapter 1444, Statutes of 1987, Section 2:

"As used in this article:
(a) "Child" means a person under the age of 18 years.
(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:
(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).
(2) "Sexual exploitation" refers to any of the following:
(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).
(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.
(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.
(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.
(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child form severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.
(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.
For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or

guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee or a licensed community care or child day care facility, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, a certificated pupil personnel employee of any public or private school; an administrator or a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; and employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or counselor in, a child abuse prevention program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department. It does not include a school district police or security department.

to change the term "sexual assault" to "sexual abuse" which, by definition, includes both sexual assault and, for the first time, "sexual exploitation" as defined in Penal Code Section 11165 subdivision (b)(2) to include conduct involving matter depicting a minor engaged in obscene acts in violation of Penal Code Section 311.2 or the employment of minors to perform obscene acts in violation of subdivision (a) of Section 311.4. "Sexual exploitation" is also defined to include the knowing promotion, aiding, assisting, employing, use, persuasion, inducement, or coercion of a child, or if any parent or guardian of a child under his or her control knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes. "Sexual exploitation" is also defined to include the depiction of a child in, or knowing development, duplication, printing, or exchange of, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct. Therefore, for the first time, "child care custodians" were also required to report instances of sexual exploitation. Subdivision (h), of section 11165, was amended to add, for the first time, persons who are administrators, presenters of, or counselors in, a child abuse prevention program in any public or private school to the list of "child care custodians."

Chapter 1459, Statutes of 1987 made numerous changes to the Child Abuse and Neglect Reporting Act. Section 1 repealed former Section 11165 of the Penal Code.

(l) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency."

Section 2 added a new Penal Code section 11165[50] to define "child" as a person under the age of 18 years (formerly, subdivision (a) of Section 11165).

Section 3 repealed Penal Code Section 11165.1 and Section 5, added a new Penal Code Section 11165.1[51] which is substantially similar to subdivision (b) of former

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[50] Penal Code Section 11165, added by Chapter 1459, Statutes of 1987, Section 2:

"As used in this article "child" means a person under the age of 18 years."

[51] Penal Code Section 11165.1, added by Chapter 1459, Statutes of 1987, Section 5:

"As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections : Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for the purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or

Section 11165, to define "sexual abuse" to mean sexual assault or sexual exploitation.

Section 7 added Penal Code Section 11165.2[52], which is substantially similar to subdivision (c) of former Section 11165 to define "neglect", "severe neglect", and "general neglect."

Section 8 repealed Penal Code Section 11165.3 and Section 9 added a new

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other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3."

[52] Penal Code Section 11165.2, added by Chapter 1459, Statutes of 1987, Section 7:

As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect."

Penal Code Section 11165.3[53], which is substantially similar to subdivision (d) of former Section 11165, to define "willful cruelty or unjustifiable punishment of a child."

Section 10 added Penal Code Section 11165.4[54], which is substantially similar to subdivision (e) of former Section 11165, which defines "unlawful corporal punishment or injury."

Section 11 repealed Penal Code Section 11165.5 and Section 12 added a new Penal Code Section 11165.5[55], which is substantially similar to subdivision (f) of former Section 11165 to define "abuse in out-of-home care."

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[53] Penal Code Section 11165.3, added by Chapter 1459, Statutes of 1987, Section 9:

"As used in this article, "willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered."

[54] Penal Code Section 11165.4, added by Chapter 1459, Statutes of 1987, Section 10:

"As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code."

[55] Penal Code Section 11165.5, added by Chapter 1459, Statutes of 1987, Section 12:

"As used in this article, "abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or unlawful corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency."

Section 13 added Penal Code Section 11165.6[56], which is substantially similar to subdivision (g) of former Section 11165, to define "child abuse."

Section 14 added Penal Code Section 11165.7[57], which is substantially similar to subdivision (h) of former Section 11165, to define "child care custodian." Subdivision (a) defines "child care custodian" to again include "teachers" only when trained in the duties imposed by the article and to again include instructional aides, teacher aides and teacher assistants employed by any public or private school only when trained in the

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[56] Penal Code Section 11165.6, added by Chapter 1459, Statutes of 1987, Section 13:

"As used in this article, "child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (unlawful corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors."

[57] Penal Code Section 11165.7, added by Chapter 1459, Statutes of 1987, Section 14:

"(a) As used in this article, "child care custodian" means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a licensed community care of child day care facility; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided."

duties imposed by the article. Subdivision (a) also expands the definition to include classified employees who have been trained in the duties imposed by this article and all administrative officers, supervisors of child welfare and attendance and certificated pupil personnel employees of any public or private school. Subdivision (b) describes the training required and, for the first time, requires school districts to provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights. Subdivision (c) for the first time requires school districts who do not train employees specified in subdivision (a) in the duties of child care custodians to report to the State Department of Education the reasons why this training is not provided. Therefore, for the first time, classified employees (who have been trained in the duties imposed by this article) were required to report child abuse to a child protection agency. Also, for the first time, school districts are required either to train child care custodians under the child abuse reporting laws or report to the State Department of Education why this training is not provided.

Section 16 added Penal Code Section 11165.9[58] to define "child protective agency" as a police or sheriff's department, a county probation department, or a county welfare department. School district police or security departments are not included in the definition of "child protective agency" as defined in Section 11165.9.

Section 20 amended Penal Code Section 11166[59] to substitute the term "health

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[58] Penal Code Section 11165.9, added by Chapter 1459, Statutes of 1987, Section 16:

"As used in this article, "child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department. It does not include a school district police or security department."

[59] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1459, Statutes of 1987, Section 20:

"(a) Except as provided in subdivision (b), any child care custodian, ~~medical~~

~~practitioner, nonmedical practitioner~~, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, ~~medical practitioner, nonmedical practitioner~~ health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

practitioner" for the terms "medical practitioner" and "nonmedical practitioner" and other technical changes.

Section 21 amended Penal Code Section 11166.5[60] to make technical changes,

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The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section ~~11165~~ 11165.6, except acts or omissions coming within ~~the provisions of paragraph (2) of subdivision (c) of Section 11165~~ subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the ~~county welfare department~~ the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within ~~the provisions of paragraph (2) of subdivision (c) of Section 11165~~ subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

[60] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, and amended by Chapter 1459, Statutes of 1987, Section 21:

"(a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, ~~medical practitioner, nonmedical practitioner~~, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, ~~medical practitioner, nonmedical practitioner~~, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse

to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teachers's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

~~"Medical practitioner"~~ "Health care practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, ~~nonmedical practitioner includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children~~ marriage, family and child counselors; emergency medical technicians I or II; paramedics; or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or both.

(c) As an alternative to the procedure required by subdivision (b), a state agency

and to update the content of the form required to be signed by child care custodians, upon being employed, to conform to other changes made by the chapter.

Chapter 39, Statutes of 1988, Sections 1, 2 and 3 amended Penal Code Sections 11165.4[61], 11165.5[62], and 11165.6[63] to provide exemptions for specified peace officer

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may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986."

[61] Penal Code Section 11165.4, added by Chapter 1459, Statutes of 1987, Section 10, as amended by Chapter 39, Statutes of 1988, Section 1:

"As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an amount of force that is reasonable and necessary for a peace officer to quell a disturbance threatening physical injury to person or damage to property to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of the child, or to apprehend an escapee.

[62] Penal Code Section 11165.5, added by Chapter 1459, Statutes of 1987, Section 12, as amended by Chapter 39, Statutes of 1988, Section 2:

"As used in this article, "abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or unlawful corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse in out-of-home care does not include an injury caused by reasonable and necessary force used by a peace officer to quell a disturbance threatening physical injury to a person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of a child, or to apprehend an escapee.

[63] Penal Code Section 11165.6, added by Chapter 1459, Statutes of 1987, Section 13, as amended by Chapter 39, Statutes of 1988, Section 3:

"As used in this article, "child abuse" means a physical injury which is inflicted by

activities.

Chapter 269, Statutes of 1988, Section 1 amended subdivision (f) of Section 11166[64] of the Penal Code to add that any supervisor or administrator who impedes or

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other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (unlawful corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors. "Child abuse" does not include an injury caused by reasonable and necessary force used by a peace officer to quell a disturbance threatening physical injury to person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of a child, or to apprehend an escapee.

[64] Penal Code Section 11166, added by Chapter 1459, Statutes of 1987, Section 20, as amended by Chapter 269, Statutes of 1988, Section 1:

"(a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

inhibits the reporting duties of another person is guilty of a misdemeanor.

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(2) Penetration of the vagina or rectum by any object.
(3) Masturbation, for the purpose of sexual stimulation of the viewer.
(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(2) Any supervisor or administrator who violates paragraph (1) is guilty of a misdemeanor which is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars ($1,000) or by both.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

Chapter 1580, Statutes of 1988, Section 2 amended subdivision (a) of Section 11166[65] of the Penal Code to require that a child protective agency be notified and

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[65] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1580, Statutes of 1988, Section 2:

"(a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepare and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team

a report shall be prepared even if the child has expired and regardless of whether the possible abuse was a contributing factor to the death. Subdivision (f) was amended to remove paragraph (2) regarding criminal liability of supervisors and to make technical changes.

Chapter 931, Statutes of 1990, Section 1, amended Penal Code Section

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selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make such report.

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

~~(2) Any supervisor or administrator who violates paragraph (1) is guilty of a misdemeanor which is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars ($1,000) or by both.~~

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

11166.5[66] to include administrators and employees of public or private youth centers,

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[66] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, as amended by Chapter 931, Statutes of 1990, Section 1:

"(a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teachers's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, and youth organizations who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, marriage, family and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

youth recreation programs, and youth organizations in the definition of the term "child care custodian."

Chapter 1603, Statutes of 1990, Section 3 amended subdivision (g) of Section 11166[67] of the Penal Code to require county probation and welfare departments to

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This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986."

[67] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1603, Statutes of 1990, Section 3:

"(a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepare and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or

observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child regular care due to the parent's substance abuse, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within

report instances of child abuse based on the risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse to the county welfare department.

Chapter 132, Statutes of 1991, Section 1 amended subdivision (a) of Section 11165.7[68] of the Penal Code to add administrators or employees of a public or private

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subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

[68] Penal Code Section 11165.7, added by Chapter 1459, Statutes of 1987, Section 14, as amended by Chapter 132, Statutes of 1991, Section 1:

"(a) As used in this article, "child care custodian" means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; and administrator or employee of a public or private organization whose duties require direct contact and supervision of children; a licensee, an administrator, or an employee of a licensed community care of child day care facility; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer, or parole officer; an employee of a school district police or security department; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(d) Volunteers of public or private organizations whose duties require direct contact and supervision of child are encouraged to obtain training in the identification and reporting

youth centers, youth recreation programs, or youth organizations to the definition of "child care custodian."

Section 2 amended Penal Code Section 11166.5[69] to make technical changes of child abuse."

[69] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, as amended by Chapter 132, Statutes of 1991, Section 2:

"(a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teachers's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, ~~and~~ or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers, probation officer, or parole officer; an employee of a school district police department or security department; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, marriage, family and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code;

and to add administrators and employees of public and private organizations whose duties require direct contact and supervision of children, parole officers, and employees of a school district police or security department to the definition of "child care custodian" in the statement required of child care custodians upon employment.

Chapter 1102, Statutes of 1991, Section 5, added Penal Code Section 11165.14[70] which requires the local child protective agency to investigate a child abuse

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marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986."

[70] Penal Code Section 11165.14, added by Chapter 1102, Statutes of 1991, Section 5:

"The local child protective agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or a local child protective agency against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code."

complaint filed by a parent or guardian against a school employee or other person that commits an act of child abuse at a schoolsite. Therefore, for the first time, school districts are required to assist and cooperate in investigations conducted by a child protective agency of alleged acts of child abuse commited at a schoolsite.

Chapter 459, Statutes of 1992, Section 1 amended subdivision (a) of Section 11165.7[71] of the Penal Code to expand the definition of "child care custodian" to now include district attorney investigators, inspectors, or family support officers.

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[71] Penal Code Section 11165.7, added by Chapter 1459, Statutes of 1987, Section 14, as amended by Chapter 459, Statutes of 1992, Section 1:

"(a) As used in this article, "child care custodian" means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; and administrator or employee of a public or private organization whose duties require direct contact and supervision of children; a licensee, an administrator, or an employee of a licensed community care of child day care facility; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer, or parole officer; an employee of a school district police or security department; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(d) Volunteers of public or private organizations whose duties require direct contact and supervision of child are encouraged to obtain training in the identification and reporting of child abuse."

Section 3 amended Penal Code Section 11166[72] to make technical changes

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[72] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 459, Statutes of 1992, Section 3:

"(a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency, or child visitation monitor who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepare and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency, or child visitation monitor who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team

to require child visitation monitors to report child abuse.

Section 4 amended Penal Code Section 11166.5[73] to make technical changes

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selected by mutual agreement and a single report may be made and signed by ~~such~~ the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make such report.

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child regular care due to the parent's substance abuse, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning Sections 11165.4, 11165.5 and 11165.6 to provide the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

[73] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, as amended by Chapter 459, Statutes of 1992, Section 4:

"(a) On and after January 1, 1985 any person who enters into employment ~~on and after January 1, 1985,~~ as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, ~~or~~ employee of a child protective agency, or child visitation monitor who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teachers's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers, probation officer, or parole officer; an employee of a school district police department or security department; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, marriage, family and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat

and to require child visitation monitors to sign a statement to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. Section 11166.5 was also amended to expand the definition of "child care custodian" to now include district attorney investigators, inspectors, and family support officers. Subdivision (d) was added to require child visitation monitors to receive training in the duties imposed by this article, including training in child abuse identification and child abuse reporting.

Chapter 346, Statutes of 1993, Sections 1, 2 and 3 amended Penal Code

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children.

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, or by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

Sections 11165.4[74], 11165.5[75] and 11165.6[76] to provide additional exemptions for peace

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[74] Penal Code Section 11165.4, added by Chapter 1459, Statutes of 1987, Section 10, as amended by Chapter 346, Statutes of 1993, Section 1:

"As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. ~~It also does not include an amount of force that is reasonable and necessary for a peace officer to quell a disturbance threatening physical injury to person or damage to property to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of the child, or to apprehend an escapee.~~ Is also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

[75] Penal Code Section 11165.5, added by Chapter 1459, Statutes of 1987, Section 12, as amended by Chapter 346, Statutes of 1993, Section 2:

"As used in this article, "abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or unlawful corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse in out-of-home care does not include an injury caused by reasonable and necessary force used by a peace officer ~~to quell a disturbance threatening physical injury to a person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of a child, or to apprehend an escapee~~ acting within the course and scope of his or her employment as a peace officer.

[76] Penal Code Section 11165.6, added by Chapter 1459, Statutes of 1987, Section 13, as amended by Chapter 346, Statutes of 1993, Section 3:

"As used in this article, "child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (unlawful corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors. "Child abuse" does not include an injury caused by reasonable and necessary force used by a peace officer ~~to quell a disturbance threatening physical injury to person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain~~

officers acting within the course and scope of their employment.

Chapter 510, Statutes of 1993, Section 1.5 amended subdivision (a) of Section 11166[77] of the Penal Code to include firefighters, animal control officers, and humane

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~~possession of weapons or other dangerous objects within the control of a child, or to apprehend an escapee~~ acting within the course and scope of his or her employment as a peace officer.

[77] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 510, Statutes of 1993, Section 1.5:

"(a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency, or child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepare and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency, or child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

society officers to the list of persons required to report known or reasonably suspected instances of child abuse.

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child regular care due to the parent's substance abuse, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

Test Claim of San Bernardino Community College District
Chapter 754, Statutes of 2001 - Child Abuse and Neglect Reporting

Section 2 amended Penal Code Section 11166.5[78] to include firefighters, animal

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[78] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, as amended by Chapter 510, Statutes of 1993, Section 2:

"(a) On and after January 1, 1985 any person who enters into employment as a child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, or with a child protective agency, prior to commencing his or her employment, and as prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, employee of a child protective agency, or child visitation monitor who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teachers's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers, probation officer, or parole officer; an employee of a school district police department or security department; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists,

control officers, and humane society officers to the list of persons required to sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

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optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, marriage, family and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided."

Chapter 1253, Statutes of 1993, Section 1 amended Penal Code Section 273a[79] to make technical changes.

Chapter 1263, Statutes of 1994, Section 3 amended Penal Code Section 273a[80]

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[79] Penal Code Section 273a, added by Chapter 568, Statutes of 1905, as amended by Chapter 1253, Statutes of 1993, Section 1:

"(a)(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4 or 6 years.

(2) Any person convicted under this subdivision who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or injury that results in death, or having the care or custody of any child, under circumstances likely to produce great bodily harm or death, shall receive a four-year enhancement for each such violation in addition to the sentence provided for that conviction. Nothing in this paragraph shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 192.

~~(2)~~ (b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of ~~such~~ that child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor."

[80] Penal Code Section 273a, added by Chapter 568, Statutes of 1905, as amended by Chapter 1263, Statutes of 1994, Section 3:

"(a)~~(1)~~ Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for ~~2, 4 or 6 years~~ two, four, or six years.

~~(2) Any person convicted under this subdivision who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or injury that results in death, or having the care or custody of any child, under circumstances likely to produce great bodily harm or death, shall receive a four-year enhancement for each such violation in addition to the sentence provided for that conviction. Nothing in this paragraph shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 192.~~

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully

to make technical changes.

Chapter 1080, Statutes of 1996, Section 10 amended Penal Code Section 11166[81] to make technical changes.

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causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor."

[81] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1080, Statutes of 1996, Section 10:

"(a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency, or child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepare and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency, or child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

Chapter 1081, Statutes of 1996, Section 3.5 amended Penal Code Section

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child regular care due to the parent's substance abuse, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

11166[82] to make technical changes and to require clergy members to report both known

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[82] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 1081, Statutes of 1996, Section 3.5:

"(a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency, or child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepare and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, ~~or~~ employee of a child protective agency, or child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c)(1) Except as provided in paragraph (2) and subdivision (d), any clergy member who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her duties, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death.

(2) A clergy member who acquires knowledge or reasonable suspicion of child abuse during a penitential communication is not subject to paragraph (1). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(3) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse when he or she is acting in the capacity of a child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, humane society officer, or commercial film print processor.

(d) Any member of the clergy who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is

endangered in any other way may report the known or suspected instance of child abuse to a child protective agency.

~~(e)~~(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photographic, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

~~(d)~~(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

~~(e)~~(g) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make such report.

~~(f)~~(h) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit such reporting duties, and no person making such report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

~~(g)~~(i) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child regular care due to the parent's substance abuse, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report

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and suspected cases of child abuse.

Section 4 amended Penal Code Section 11166.5[83] to make technical changes

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by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information required to make a telephone report under this subdivision."

[83] Penal Code Section 11166.5, added by Chapter 1718, Statutes of 1984, Section 1, as amended by Chapter 1081, Statutes of 1996, Section 4:

"(a) On and after January 1, 1985 any person who enters into employment as a child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, or with a child protective agency, prior to commencing his or her employment, and as prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, employee of a child protective agency, or child visitation monitor who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

For the purposes of this section "child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teachers's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth

organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers, probation officer, or parole officer; an employee of a school district police department or security department; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, marriage, family and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics, ~~and religious practitioners who diagnose, examine, or treat children.~~

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section

and to remove religious practitioners who diagnose, examine, or treat children from the meaning of the definition of "health practitioner."

Chapter 1090, Statutes of 1996, Section 1 amended Penal Code Section 273a[84]

11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided."

[84] Penal Code Section 273a, added by Chapter 568, Statutes of 1905, as amended by Chapter 1090, Statutes of 1996, Section 1:

"(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits such child to be placed in such situation ~~that~~ where ~~its~~ his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4 or 6 years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

to make technical changes.

Chapter 83, Statutes of 1997, Section 1 amended subdivision (a) of Section 11165.1[85] of the Penal Code to include subdivision (d) of Section 265.1 (statutory rape)

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[85] Penal Code Section 11165.1, added by Chapter 1459, Statutes of 1987, Section 5, as amended by Chapter 83, Statutes of 1997, Section 1:

"As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections : Section 261 (rape), subdivision (d) of Section 265.1 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for the purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is

to the meaning of the term "sexual assault."

Chapter 134, Statutes of 1997, Section 1 amended Penal Code Section 273a[86] to make technical changes.

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engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3."

[86] Penal Code Section 273a, added by Chapter 568, Statutes of 1905, as last amended by Chapter 134, Statutes of 1997, Section 1:

"(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3)(A) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver."

Chapter 311, Statutes of 1998, Section 51, amended Penal Code Section 11174.3[87] to add the State Department of Social Services as an agency that may also interview a suspected victim of child abuse during school hours with a member of the staff present.

Chapter 287, Statutes of 2000, Section 1, amended Penal Code Section 11165.1 to make a tecnical change,

Chapter 916, Statutes of 2000 made several changes to the Child Abuse and Neglect Reporting Act. Section 1 amended Penal Code Section 11164[88] to add "neglect"

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[87] Penal Code Section 11174.3, added by Chapter 640, Statutes of 1987, Section 2, as amended by Chapter 311, Statutes of 1998, Section 51:

"(a) Whenever a representative of a child protective agency or the State Department of Social Services deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each child protective agency and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse of the requirements of this section."

[88] Penal Code Section 11164, as amended by Chapter 916, Statutes of 2000, Section 1

"(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

to the statutory intent and purpose, formerly referred to only as "abuse." Therefore, for the first time, the intent and purpose of the article is to protect children from neglect as well as abuse.

Section 2 amended Penal Code Section 11165.5[89] to expand and clarify the term "abuse or neglect" when referring to "out of home care."

Section 3 repealed former Penal Code Section 11165.6 and section 4 added a new Penal Code Section 11165.6[90] , which is substantially similar to the former section but replaces "child abuse" with "child abuse or neglect."

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."

[89] Penal Code Section 11165.5, added by Chapter 1071, Statutes of 1980, Section 4, and amended by Chapter 916, Statutes of 2000, Section 2:

"As used in this article, the term "abuse or neglect in out-of-home care" ~~means a situation~~ includes sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful cruelty or unjustifiable punishment of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer."

[90] Penal Code Section 11165.6, added by Chapter 916, Statutes of 2000, Section 4:

"As used in this article, "child abuse" means a physical injury that is inflicted by other than accidental means on a child by another person. The term "child abuse or neglect" includes sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, unlawful corporal punishment or injury as defined in Section 11165.4, and abuse or neglect in out-of-home care as defined in Section 11165.5. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer."

Section 5 amended Penal Code Section 11165.7[91] by changing the name of the

[91] Penal Code Section 11165.7, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 916, Statutes of 2000, Section 5:

"(a) As used in this article, ~~"child care custodian" means~~ "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school ~~who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education.~~

(4) A classified employee of any public school ~~who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education.~~

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

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

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

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

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

(11) A headstart teacher.

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

(13) A public assistance worker.

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

(15) A social worker ~~or a~~, probation officer, ~~or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school~~ or parole officer.

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

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

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

(20) A firefighter, except for voluntary firefighters.

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

(22) Any emergency medical technician I or II, paramedic, or other person certified

class of persons required to report from "child care custodians" to "mandated reporters." Section 5 also expanded the list of mandated reporters to include, for the first time, any

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pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

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

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

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

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

(27) A coroner.

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

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

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

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article."

employee of a county office of education whose duties bring the employee into contact with children on a regular basis, employees of school district police or security departments, any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school. Therefore, for the first time, employees of a county office of education whose duties bring them into contact with children on a regular basis, employees of school district police or security departments, and any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school is required to report child abuse or neglect.

Section 7 repealed Penal Code Section 11165.9 and Section 8 added a new Penal Code Section 11165.9[92] to require reports of suspected child abuse or neglect to be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department (excluding school district police or security departments) and to require any of these agencies to accept reports of suspected child abuse or neglect or immediately refer the case to an agency with proper jurisdiction if the agency that initially received the report does not have proper jurisdiction.

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[92] Penal Code Section 11165.9, added by Chapter 916, Statutes of 2000, Section 8:

"Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction."

Section 12 amended Penal Code section 11165.14[93] to change the investigating agency from a "child protective" agency to a "law enforcement" agency.

Section 16 amended Penal Code section 11166[94] to add subdivision (b), which

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[93] Penal Code Section 11165.14, added by Chapter 1102, Statutes of 1991, Section 5, as amended by Chapter 916, Statutes of 2000, Section 12:

"The appropriate local ~~child protective~~ law enforcement agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or ~~a local child protective~~ an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code."

[94] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section, as amended by Chapter 916, Statutes of 2000, Section 16:

"(a) Except as provided in subdivision ~~(b)~~ (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, ~~whom he or she~~ has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child ~~abuse~~ abuse or neglect. The mandated reporter shall make a report ~~thereof~~ to ~~within 36 hours of receiving the information concerning the incident~~ the agency immediately or as soon as ~~practically~~ is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident ~~A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether o not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy~~.

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

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

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

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor

punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

(c) (1) ~~Except as provided in paragraph (2) and subdivision (d), any~~ A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect ~~when he or she is~~ the clergy member is acting in ~~the capacity of a child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, humane society officer, or commercial film print processor~~ some other capacity that would otherwise make the clergy member a mandated reporter.

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

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

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

~~(h)~~(g) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established

makes it a misdemeanor punishable by 6 months confinement in a county jail or a fine of one thousand dollars, or both, for a mandated reporter to fail to report an incident of known or reasonably suspected child abuse or neglect. Therefore, for the first time, failure by a mandated reporter to report suspected cases of child abuse or neglect is a misdemeanor.

Section 26 amended Penal Code Section 11168 to make technical changes.

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provided that they are not inconsistent with this article.

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

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

(h) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronically transmit to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. For the purposes of this subdivision, a fax or electronic transmission shall be deemed to be a written report.

(i) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

Section 33 amended Penal Code Section 11174.3[95] to remove references to child protective agencies and replaced those references with "government agency". The section was also amended to change references from "child abuse" to "child abuse or neglect".

Chapter 133, Statutes of 2001, Section 1 amended Penal Code section 11165.5[96]

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[95] Penal Code Section 11174.3, added by Chapter 640, Statutes of 1987, Section 2, as amended by Chapter 916, Statutes of 2000, Section 33:

"(a) Whenever a representative of a ~~child protective~~ government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the ~~child protective~~ agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each ~~child protective~~ agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section."

[96] Penal Code Section 11165.5 added by Chapter 1071, Statutes of 1980, Section 4, as last amended by Chapter 133, Statutes of 2001, Section 1:

"As used in this article, the term"abuse or neglect in out-of-home care" includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful cruelty or unjustifiable punishment of a child, as defined in Section 11165.3, where the person

to add physical injury inflicted upon a child by another person by other than accidental means to the definition of abuse in out-of-home care.

Section 2 amended Penal Code section 11165.6[97] to make technical changes and to replace "child abuse" with "child abuse or neglect."

Section 3 amended Penal Code section 11165.7[98] to make technical changes

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responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer."

[97] Penal Code Section 11165.6 added by Chapter 1459, Statutes of 1987, Section 3, as last amended by Chapter 133, Statutes of 2001, Section 2:

"As used in this article, the term "child abuse ~~means a~~ or neglect includes physical injury ~~that is~~ inflicted by other than accidental means ~~on~~ upon a child by another person ~~the term "child abuse or neglect" includes~~, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4 ~~and abuse or neglect in out-of-home care as defined in Section 11165.5.~~ "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer."

[98] Penal Code Section 11165.7, added by Chapter 1071, Statutes of 1980, Section 4, as last amended by Chapter 133, Statutes of 2001, Section 3:

"(a) As used in this article, "mandated reporter" is defined as any of the following:
(1) A teacher.
(2) An instructional aide.
(3) A teacher's aide or teacher's assistant employed by any public or private school.
(4) A classified employee of any public school.
(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.
(6) An administrator of a public or private day camp.
(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
(11) A headstart teacher.

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

(13) A public assistance worker.

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

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

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

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

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

(20) A firefighter, except for ~~voluntary~~ volunteer firefighters.

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

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

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

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

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

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

(27) A coroner.

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

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

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

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in

and substitute the term "mandated reporter" for "child care custodian."

Sections 4 and 5 amended Penal Code Sections 11165.9[99] and 11166[100] to

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this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train ~~the~~ their employees specified in subdivision (a) in the duties of ~~child care custodians~~ mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article."

[99] Penal Code Section 11165.9, added by Chapter 916, Statutes of 2000, Section 8, as amended by Chapter 133, Statutes of 2001, Section 4:

"Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department~~,~~ or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. ~~It does not include a school district police or security department~~. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or ~~referral~~ referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction."

[100] Penal Code Section 11166, added by Chapter 1071, Statutes of 1980, Section 4, as amended by Chapter 133, Statutes of 2001, Section 5:

(a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

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

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

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

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

(c)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

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

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

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

(f) When two or more persons, who are required to report, jointly have knowledge

make technical changes.

Chapter 754, Statutes of 2001, Section 4 amended Penal Code Section

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of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

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

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

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

(h) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or ~~electronically transmit~~ electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it ~~is required to make~~ makes a telephone report under this subdivision. ~~For the purposes of this subdivision, a fax or electronic transmission shall be deemed to be a written report.~~

(i) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it ~~is required to make~~ makes a telephone report under this subdivision.

11165.7[101] to add an employee or volunteer of a Court Appointed Special Advocate

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[101] Penal Code Section 11165.7, added by Chapter 1459, Statutes of 1987, Section 14, as amended by Chapter 754, Statutes of 2001, Section 4:

(a) As used in this article, "mandated reporter" is defined as any of the following:
(1) A teacher.
(2) An instructional aide.
(3) A teacher's aide or teacher's assistant employed by any public or private school.
(4) A classified employee of any public school.
(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.
(6) An administrator of a public or private day camp.
(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
(11) A headstart teacher.
(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.
(13) A public assistance worker.
(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
(15) A social worker, probation officer, or parole officer.
(16) An employee of a school district police or security department.
(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.
(20) A firefighter, except for volunteer firefighters.
(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.
(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.
(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.
(24) A marriage, family and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

Program to the meaning of the term "mandated reporter."

PART III. STATEMENT OF THE CLAIM

SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

The statutes referenced in this test claim result in school districts incurring costs

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

(27) A coroner.

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

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

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

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(34) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

mandated by the state, as defined in Government Code Section 17514[102], by creating new state-mandated duties related to the uniquely governmental function of providing public education to students and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[103]

The new duties mandated by the state upon school districts, county offices of education, and community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A) Whenever a mandated reporter, in his or her professional capacity or within the scope of his or her 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, to report such fact to a police department, a sheriff's department, or to the County Welfare Department, pursuant to Penal Code Sections 11165.9 and 11166, Subdivision (a).

B) All mandated reporters are further compelled to report incidents of child abuse or neglect by the fact that the failure to do so is a misdemeanor,

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[102] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

[103] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App. 3d 155:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

pursuant to Penal Code Section 11166, Subdivision (b).

C) The reports of the mandated reporters specified above are required to be made on forms adopted by the Department of Justice and distributed by police departments, sheriff's departments, or by the County Welfare Departments, pursuant to Penal Code Section 11168.

D) The reports of the mandated reporters specified above are required to be made as soon as practicable by telephone and in writing within 36 hours, pursuant to Penal Code Section 11166, Subdivision (a)

E) To assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a schoolsite, pursuant to Penal Code Section 11165.14.

F) To notify the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests, pursuant to Penal Code Section 11174.3

G) To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided, pursuant to Penal Code Section 11165.7 , Subdivision (d)

H) When training their mandated reporters in child abuse or neglect reporting, to supply those trainees with a written copy of their reporting requirements and a written disclosure of their confidentiality rights, Pursuant to Penal Code Section 11165.7, Subdivision (c).

I) To obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties, Pursuant to Penal Code

Section 11166.5.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[104] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code sections, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[105]

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[104] Government Code section 17556 as last amended by Chapter 589/89:

The Commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.
(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.
(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

[105] Government Code section 17565:

If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school

SECTION 3. FUNDING FOR THE STATE MANDATE

No funds were appropriated in any of the statutes cited for reimbursement of the costs mandated by the state.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: The Declaration of Michael Carr, Director of Student Services, San Jose Unified School District

Exhibit 2: The Declaration of Juliann Martin, Chair, Child Development, San Bernardino Community College District.

Exhibit 3: Copies of Statutes cited

Chapter 754, Statutes of 2001

Chapter 133, Statutes of 2001

Chapter 916, Statutes of 2000

Chapter 287, Statutes of 2000

Chapter 311, Statutes of 1998

Chapter 134, Statutes of 1997

Chapter 83, Statutes of 1997

Chapter 1090, Statutes of 1996

Chapter 1081, Statutes of 1996

Chapter 1080, Statutes of 1996

Chapter 1263, Statutes of 1994

Chapter 1253, Statutes of 1993

Chapter 510, Statutes of 1993

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district for those costs incurred after the operative date of the mandate.

Chapter 346, Statutes of 1993

Chapter 459, Statutes of 1992

Chapter 1102, Statutes of 1991

Chapter 132, Statutes of 1991

Chapter 1603, Statutes of 1990

Chapter 931, Statutes of 1990

Chapter 1580, Statutes of 1988

Chapter 269, Statutes of 1988

Chapter 39, Statutes of 1988

Chapter 1459, Statutes of 1987

Chapter 1444, Statutes of 1987

Chapter 1418, Statutes of 1987

Chapter 1020, Statutes of 1987

Chapter 640, Statutes of 1987

Chapter 1289, Statutes of 1986

Chapter 248, Statutes of 1986

Chapter 1598, Statutes of 1985

Chapter 1572, Statutes of 1985

Chapter 1528, Statutes of 1985

Chapter 1420, Statutes of 1985

Chapter 1068, Statutes of 1985

Chapter 464, Statutes of 1985

Chapter 189, Statutes of 1985

Chapter 1718, Statutes of 1984

Chapter 1613, Statutes of 1984

Chapter 1423, Statutes of 1984

Chapter 1391, Statutes of 1984

Chapter 1170, Statutes of 1984

Chapter 905, Statutes of 1982

Chapter 435, Statutes of 1981

Chapter 29, Statutes of 1981

Chapter 1117, Statutes of 1980

Chapter 1071, Statutes of 1980

Chapter 855, Statutes of 1980

Chapter 373, Statutes of 1979

Chapter 136, Statutes of 1978

Chapter 958, Statutes of 1977

Chapter 1139, Statutes of 1976

Chapter 242, Statutes of 1976

Chapter 226, Statutes of 1975

Exhibit 4: Copies of Code Sections cited

Penal Code Section 273a

Penal Code Section 11161.5

Penal Code Section 11161.6

Penal Code Section 11161.7

Penal Code Section 11164

Penal Code Section 11165

Penal Code Section 11165.1

Penal Code Section 11165.2

Penal Code Section 11165.3

Penal Code Section 11165.4

Penal Code Section 11165.5

Penal Code Section 11165.6

Penal Code Section 11165.7

Penal Code Section 11165.9

Penal Code Section 11165.14

Penal Code Section 11166

Penal Code Section 11166.5

Penal Code Section 11168

Penal Code Section 11174.3

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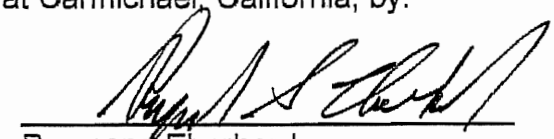
PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June _____, 2002 at Carmichael, California, by:

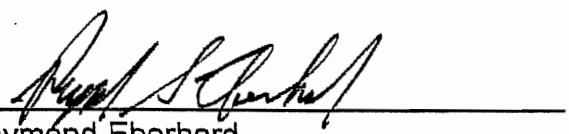


Raymond Eberhard
Business Manager
San Bernardino Community College District

Voice (909) 382-4031
Fax: (909) 382-0116
/
/

PART VI. APPOINTMENT OF REPRESENTATIVE

The San Bernardino Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



Raymond Eberhard
Business Manager
San Bernardino Community College District

6/25/02
Date

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EXHIBIT 1
DECLARATION OF MICHAEL CARR

DECLARATION OF MICHAEL CARR

San Jose Unified School District

Test Claim of San Bernardino Community College District

COSM _____

Penal Code Section 273a
Penal Code Section 11161.5
Penal Code Section 11161.6
Penal Code Section 11161.7
Penal Code Section 11164
Penal Code Section 11165
Penal Code Section 11165.1
Penal Code Section 11165.2
Penal Code Section 11165.3
Penal Code Section 11165.4
Penal Code Section 11165.5
Penal Code Section 11165.6
Penal Code Section 11165.7
Penal Code Section 11165.9
Penal Code Section 11165.14
Penal Code Section 11166
Penal Code Section 11166.5
Penal Code Section 11174.3

Child Abuse and Neglect Reporting

I, Michael Carr, Director of Student Services, San Jose Unified School District, make the following declaration and statement.

In my capacity as Director of Student Services, I am responsible for implementing the Child Abuse and Neglect Reporting requirements for the district. I am familiar with the training and reporting requirements of the Penal Code sections enumerated above.

These Penal Code sections require the San Jose Unifies School District to:

1) Pursuant to Penal Code Sections 11165.9 and 11166, Subdivision (a), whenever a mandated reporter, in his or her professional capacity or within the scope of his or her 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, to report such fact to a police department, a sheriff's department, or to the County Welfare Department.

2) Pursuant to Penal Code Section 11168, the reports of the mandated reporters

specified above are required to be made on forms adopted by the Department of Justice and distributed by police departments, sheriff's departments, or by the County Welfare Departments.

3) Pursuant to Penal Code Section 11166, Subdivision (a), the reports of the mandated reporters specified above are required to be made as soon as practicable by telephone and in writing within 36 hours.

4) Pursuant to Penal Code Section 11165.14, to assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a schoolsite.

5) Pursuant to Penal Code Section 11174.3, to notify the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests.

6) Pursuant to Penal Code Section 11165.7, Subdivision (d), to either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided.

7) Pursuant to Penal Code Section 11165.7, Subdivision (c), when training their mandated reporters in child abuse or neglect reporting, to supply those trainees with a written copy of their reporting requirements and a written disclosure of their confidentiality rights.

8) Pursuant to Penal Code Section 11166.5, to obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties.

It is estimated that the San Jose Unified School District has incurred in excess of $200, annually, in staffing and other costs for the period from July 1, 2000 through June, 2002 to implement these new duties mandated by the state for which the school district

has not been reimbursed by any federal, state, or local goverment agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated, I declare that I believe them to be true.

EXECUTED this 24 day of June at San Jose, California.

Michael Carr
Director of Student Services
San Jose Unified School District

EXHIBIT 2
DECLARATION OF JULIANN MARTIN

DECLARATION OF JULIANN MARTIN

San Bernardino Community College District

Test Claim of San Bernardino Community College District

COSM No. _____

Penal Code Section 273a	Penal Code Section 11165.4
Penal Code Section 11161.5	Penal Code Section 11165.5
Penal Code Section 11161.6	Penal Code Section 11165.6
Penal Code Section 11161.7	Penal Code Section 11165.7
Penal Code Section 11164	Penal Code Section 11165.9
Penal Code Section 11165	Penal Code Section 11165.14
Penal Code Section 11165.1	Penal Code Section 11166
Penal Code Section 11165.2	Penal Code Section 11166.5
Penal Code Section 11165.3	Penal Code Section 11174.3

Child Abuse and Neglect Reporting

I, Juliann Martin, Chair, Child Development and Family and Consumer Science, San Bernardino Community College District, make the following declaration and statement.

In my capacity as Chair, Child Development and Family and Consumer Science, I am responsible for implementing the Child Abuse and Neglect Reporting requirements for the district. I am familiar with the training and reporting requirements of the Penal Code sections enumerated above.

These Penal Code sections require the San Bernardino Community College District to:

1) Pursuant to Penal Code Sections 11165.9 and 11166, Subdivision (a), whenever a mandated reporter, in his or her professional capacity or within the scope of his or her 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, to report such fact to a police department, a sheriff's department, or to the County Welfare Department.

2) Pursuant to Penal Code Section 11168, the reports of the mandated reporters specified above are required to be made on forms adopted by the Department of Justice and distributed by police departments, sheriff's departments, or by the County Welfare Departments.

3) Pursuant to Penal Code Section 11166, Subdivision (a), the reports of the mandated reporters specified above are required to be made as soon as practicable by telephone and in writing within 36 hours.

4) Pursuant to Penal Code Section 11165.14, to assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a schoolsite.

5) Pursuant to Penal Code Section 11174.3, to notify the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests.

6) Pursuant to Penal Code Section 11165.7, Subdivision (d), to either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided.

7) Pursuant to Penal Code Section 11165.7, Subdivision (c), when training their mandated reporters in child abuse or neglect reporting, to supply those trainees with a written copy of their reporting requirements and a written disclosure of their confidentiality rights.

8) Pursuant to Penal Code Section 11166.5, to obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their

agreement to perform those duties.

It is estimated that the San Bernardino Community College District has incurred in excess of $200, annually, in staffing and other costs for the period from July 1, 2000 through June, 2002 to implement these new duties mandated by the state for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated, I declare that I believe them to be true.

EXECUTED this 25 day of June at San Bernardino, California.

Juliann Martin
Chair, Child Development,
Family and Consumer Science
San Bernardino Community College District

EXHIBIT 3
COPIES OF STATUTES CITED

EXHIBIT 4
COPIES OF CODE SECTIONS CITED

Exhibit 3
Copies of Statutes Cited

entered, or a finding upon which it was entered is to be binding upon a nonparty pursuant to this subdivision or whether such nonparty is entitled to the benefit of this subdivision may, on the noticed motion of any party or any nonparty that may be affected by this subdivision, be made in the court in which the action was tried or in which the action is pending on appeal. If no such motion is made before the judgment becomes final, the determination may be made in a separate action. If appropriate, a judgment may be entered or ordered to be entered pursuant to such determination.

CHAPTER 226

An act to amend Section 11161.5 of, and to add Section 11161.6 to, the Penal Code, relating to child abuse.

[Approved by Governor July 4, 1975. Filed with Secretary of State July 5, 1975.]

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

SECTION 1. Section 11161.5 of the Penal Code is amended to read:

11161.5. (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge ~~or care~~, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center or social worker from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county

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welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made with malice.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department.

SEC. 2. Section 11161.6 is added to the Penal Code, to read:

11161.6. In any case in which a minor is observed by a probation officer and it appears to the probation officer from observation of the minor that the minor has a physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any

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injury prohibited by the terms of Section 273a has been inflicted upon the minor, he may report such injury to the agencies designated in Section 11161.5.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made with malice.

CHAPTER 227

An act to amend Section 71383 of the Government Code, Section 2616 of the Revenue and Taxation Code, Sections 5833 and 19132 of the Streets and Highways Code, and Section 579 of the Welfare and Institutions Code, relating to local agencies.

[Approved by Governor July 4, 1975. Filed with Secretary of State July 5, 1975.]

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

SECTION 1. Section 71383 of the Government Code is amended to read:

71383. The accounts of each municipal court and justice court shall be audited at least biennially. The county auditor shall supply the State Controller with a certified copy of each such audit. If the accounts of any municipal or justice court are not audited biennially, the State Controller may audit them. If such audit is requested by the board of supervisors the cost of such audit shall be paid from the general fund of the county in which such court is situated.

SEC. 2. Section 2616 of the Revenue and Taxation Code is amended to read:

2616. On or before the fifth day in each month the tax collector shall account to the auditor for all moneys collected during the preceding month. On the same day he shall file with the auditor a statement under oath, showing that all money collected by him has been paid as required by law.

On or before the 25th day of each month, or at greater intervals not exceeding 90 days and on dates approved by the auditor, the tax collector shall file with the auditor a statement under oath, showing an itemized account of all his transactions and receipts since his last settlement, including the amount collected for each fund or district extended on the roll.

In counties using a mechanized management reporting system in reporting information for a uniform four-week period, the board of supervisors, by ordinance, may provide for the duties required by this section to be performed on a corresponding uniform four-week period.

SEC. 3. Section 5833 of the Streets and Highways Code is amended to read:

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CHAPTER 241

An act to amend Section 20750.3 of, and to repeal Sections 20750.33 and 20750.34 of, the Government Code, relating to the Public Employees' Retirement System, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 19, 1976. Filed with Secretary of State June 21, 1976.]

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

SECTION 1. Section 20750.3 of the Government Code is amended to read:

20750.3. The state's contribution to the retirement fund in respect to state safety members is a sum equal to the percent of the compensation set out in the following table paid state safety members by the state during the period specified:

Period during which compensation was paid	Percent
July 1, 1976 to June 30, 1977	18.41
July 1, 1977 and thereafter	19.13

SEC. 2. Section 20750.33 of the Government Code is repealed.

SEC. 3. Section 20750.34 of the Government Code is repealed.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Valuation of the Public Employees' Retirement System has been completed and discloses a need to adjust the state's rate of contribution to the retirement fund with respect to state safety members effective July 1, 1976. In order that such rate adjustment may be accomplished and the integrity of the fund maintained, this act must take effect immediately.

CHAPTER 242

An act to amend Sections 11161.5 and 11161.6 of the Penal Code, relating to child abuse.

[Approved by Governor June 19, 1976. Filed with Secretary of State June 21, 1976.]

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

SECTION 1. Section 11161.5 of the Penal Code is amended to read:

11161.5. (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center or social worker from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the person knew or should have known that the report was false.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of

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Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department.

SEC. 2. Section 11161.6 of the Penal Code is amended to read:

11161.6. In any case in which a minor is observed by a probation officer or any person other than a person described in Section 11161.5 and it appears to the probation officer or person from observation of the minor that the minor has a physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he may report such injury to the agencies designated in Section 11161.5.

No probation officer or person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the probation officer or person knew or should have known that the report was false.

CHAPTER 243

An act to add Section 20456.4 to the Education Code, relating to county superintendents of schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 19, 1976. Filed with Secretary of State June 21, 1976.]

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CHAPTER 1139

An act to amend Sections 585, 1701, 2141.5, 4390, 10238.6, and 11023 of the Business and Professions Code, to amend Sections 2985.2 and 2985.3 of the Civil Code, to amend Sections 2255, 2256, 22002, 25540, 25541, 27203, 29102, 29570, 31410, 31411, and 35301 of the Corporations Code, to amend Sections 25393 and 29042 of the Education Code, to amend Sections 220, 12012, 14720, 14722 15280, 29001, 29002, 29100, 29101, 29102, 29103, 29160, 29214, 29215, 29216, 29217, 29218, 29219, 29220, 29221, 29222, 29223, 29224, 29225, 29226, 29227, 29400, 29430, and 29431 of the Elections Code, to amend Sections 3531, 3532, 5018, 5019, 5603, 5606, and 5809 of the Financial Code, to amend Sections 17701, 18932, 18933, 19440, and 19441 of the Food and Agricultural Code, to amend Sections 1097, 1369, 1855, 3109, 6200, 6201, 9056, 14423, and 27443 of the Government Code, to amend Sections 304, 305, and 306 of the Harbors and Navigations Code, to amend Sections 1715, 7051, 11350, 11351, 11352, 11353, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11368, 11371, 11377, 11378, 11379, 11380, 11382, and 11383 of the Health and Safety Code, to amend Sections 556, 833, 1043, 1215.10, 1764.7, 1814, 11161, and 12660 of the Insurance Code, to amend Section 7771 of the Labor Code, to amend Section 1673 of the Military and Veterans Code, to amend Sections 18, 33, 38, 67, 68, 69, 71, 72, 85, 86, 92, 93, 95, 96, 99, 100, 107, 109, 110, 126, 136, 142, 148.1, 148.3, 148.4, 149, 153, 156, 157, 165, 171c, 171d, 181, 182, 190, 193, 204, 208, 209, 210, 211a, 213, 216, 217, 217.1, 218, 219, 219.1, 219.2, 220, 221, 226, 227, 237, 241, 243, 244, 245, 246, 264, 264.1, 265, 266, 266a, 266b, 266g, 266h, 266i, 267, 268, 273a, 273d, 274, 275, 276, 278, 280, 283, 284, 285, 286, 286.1, 288, 288a, 288b, 311.9, 313.4, 314, 337a, 337b, 337c, 337d, 337e, 337f, 337i, 337.3, 337.7, 347, 375, 382.5, 382.6, 405b, 424, 447a, 448a, 449a, 449b, 449c, 450a, 452, 454, 460, 461, 464, 470a, 470b, 473, 474, 475, 475a, 476, 476a, 478, 479, 484b, 484i, 487b, 487d, 489, 496, 496a, 499c, 499d, 500, 506b, 514, 520, 524, 529, 533, 535, 540, 541, 542, 543, 548, 560, 560.4, 577, 578, 580, 581, 587, 591, 593, 597, 606, 610, 617, 620, 625b, 626.9, 631, 632, 634, 635, 637, 647a, 653f, 654, 664, 666, 668, 1168, 1319.4, 2042, 3022, 3025, 3041, 3049, 3065, 4501, 4501.5, 4502, 4503, 4530, 4532, 4533, 4535, 4550, 4574, 4600, 5075, 5076, 5076.1, 5077, 5080, 5081, 5082, 6133, 11401, 12020, 12021, 12022, 12022.5, 12025, 12090, 12220, 12303, 12303.1, 12303.2, 12303.3, 12303.6, 12304, 12308, 12309, 12312, 12420, 12422, 12520, and 12560 of, to add Section 667.5 to, to add Chapter 4.5 (commencing with Section 1170) to Title 7 of Part 2, Article 2.5 (commencing with Section 2930) to Chapter 7 of Title 1 of Part 3, Article 1 (commencing with Section 3000) to Chapter 8 of Title 1 of Part 3 of, to add Sections 243.1, 3057, 3041.5, 3041.7, 5078, 12022.6, and 12022.7 to, to add and repeal Section 190.5 of, and to repeal Sections 18a, 18b, 644, 667, 671, 1168a, 1202b, 3024, 3047, 3047.5, 3048, 3048.5 as added by Chapter 934 of the 1945 Statutes, 3048.5 as added by Chapter 1381 of the 1947 Statutes, and 5078, to repeal Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3, and Chapter 5.5 (commencing with Section 6035) of Title 7

SEC. 162. Section 266i of the Penal Code is amended to read:

266i. Any person who: (a) procures another person for the purpose of prostitution; or (b) by promises, threats, violence, or by any device or scheme, causes, induces, persuades or encourages another person to become a prostitute; or (c) procures for another person a place as inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state; or (d) by promises, threats, violence or by any device or scheme, causes, induces, persuades or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate; or (e) by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution; or (f) receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution, is guilty of pandering, a felony, and is punishable by imprisonment in the state prison for two, three or four years.

SEC. 163. Section 267 of the Penal Code is amended to read:

267. Every person who takes away any other person under the age of 18 years from the father, mother, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison, and a fine not exceeding one thousand dollars ($1,000).

SEC. 164. Section 268 of the Penal Code is amended to read:

268. Every person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment in the state prison, or by a fine of not more than five thousand dollars ($5,000), or by both such fine and imprisonment.

SEC. 165. Section 273a of the Penal Code is amended to read:

273a. (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such

child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

SEC. 166. Section 273d of the Penal Code is amended to read:

273d. Any husband who willfully inflicts upon his wife corporal injury resulting in a traumatic condition, and any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison, or in the county jail for not more than one year.

SEC. 167. Section 274 of the Penal Code is amended to read:

274. Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the state prison.

SEC. 168. Section 275 of the Penal Code is amended to read:

275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the state prison.

SEC. 169. Section 276 of the Penal Code is amended to read:

276. Every person who solicits any woman to submit to any operation, or to the use of any means whatever, to procure a miscarriage, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the county jail not longer than one year or in the state prison, or by fine of not more than five thousand dollars ($5,000). Such offense must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

SEC. 170. Section 278 of the Penal Code is amended to read:

278. Every person who maliciously, forcibly, or fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state prison for two, three or four years.

SEC. 171. Section 280 of the Penal Code is amended to read:

280. Every person who willfully causes or permits the removal or concealment of any child in violation of Section 226.10 of the Civil Code is punishable as follows:

(a) By imprisonment in the county jail for not more than one year

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Section 16 of Senate Bill No. 624 be further amended on the operative date of this act in the form set forth in Section 149.5 of this act to incorporate the changes proposed by this bill. Therefore, Section 149.5 of this act shall become operative only if this bill and Senate Bill No. 685 and Senate Bill No. 624 are all chaptered and become effective January 1, 1977, all three bills amend Section 241 of the Penal Code, and this bill is chaptered after Senate Bill No. 685 and Senate Bill No. 624, in which case Sections 149, 149.2, and 149.3 of this act shall not become operative.

SEC. 357. It is the intent of the Legislature, if this bill and Senate Bill No. 685 are both chaptered and become effective January 1, 1977, both bills amend Section 243 of the Penal Code, and this bill is chaptered after Senate Bill No. 685, that Section 243 of the Penal Code, as amended by Section 3 of Senate Bill No. 685 be further amended on the operative date of this act in the form set forth in Section 150.5 of this act to incorporate the changes in Section 243 proposed by this bill. Therefore, Section 150.5 of this act shall become operative only if this bill and Senate Bill No. 685 are both chaptered and become effective January 1, 1977, both bills amend Section 243, and this bill is chaptered after Senate Bill No. 685, in which case Section 150.5 of this act shall become operative on the operative date of this act and Section 150 of this act shall not become operative.

SEC. 358. It is the intent of the Legislature, if this bill and Senate Bill No. 685 are both chaptered and become effective January 1, 1977, both bills amend Section 245 of the Penal Code, and this bill is chaptered after Senate Bill No. 685, that Section 245 of the Penal Code, as amended by Section 5 of Senate Bill No. 685 be further amended on the operative date of this act in the form set forth in Section 152.5 of this act to incorporate the changes in Section 245 proposed by this bill. Therefore, Section 152.5 of this act shall become operative only if this bill and Senate Bill No. 685 are both chaptered and become effective January 1, 1977, both bills amend Section 245, and this bill is chaptered after Senate Bill No. 685, in which case Section 152.5 of this act shall become operative on the operative date of this act and Section 152 of this act shall not become operative.

CHAPTER 1140

An act to amend Section 12020 of the Penal Code, and to repeal Section 2008 of the Fish and Game Code, relating to weapons.

[Approved by Governor September 20, 1976. Filed with Secretary of State September 21, 1976.]

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

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governmental entities or school districts by this act are such that related costs are incurred as part of their normal operating procedures.

CHAPTER 958

An act to amend Sections 11161.5 and 11161.7 of the Penal Code, relating to social services.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

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

SECTION 1. Section 11161.5 of the Penal Code is amended to read:

11161.5. (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, by any peace officer, or by any probation officer, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, administrator of a public or private summer day camp or child care center, social worker, peace officer, or probation officer, from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county

welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and with the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the person knew or should have known that the report was false.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department.

SEC. 2. Section 11161.7 of the Penal Code is amended to read:

11161.7. (a) The Department of Justice, in cooperation with the State Office of Child Abuse Prevention, shall adopt and cause to be printed, for dissemination through the various county welfare departments, a form which shall be used by reporting professional medical personnel in making reports required to be made pursuant to Section 11161.5.

(b) Failure by professional medical personnel to use such form in

reporting an incident of possible child abuse shall not constitute a violation of Section 11162.

SEC. 3. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be any appropriation made by this act because the duties, obligations, or responsibilities imposed on local government by this act are minor in nature and will not cause any financial burden on local government.

CHAPTER 959

An act making an appropriation for the support of rehabilitation facilities.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

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

SECTION 1. The sum of ten thousand dollars ($10,000) for expenditure during the 1977–78 fiscal year and twenty thousand dollars ($20,000) for expenditure during the 1978–79 fiscal year is hereby appropriated from the General Fund in the State Treasury to the Department of Rehabilitation to be matched by available federal vocational rehabilitation funds for the purpose of implementing Article 1 (commencing with Section 19400) of Chapter 5 of Part 2 of Division 10 of the Welfare and Institutions Code. Such funds shall be utilized to establish a program which encourages purchases pursuant to Section 19403 of the Welfare and Institutions Code.

CHAPTER 960

An act to amend Section 1012 of the Military and Veterans Code, relating to veterans' institutions, and making an appropriation therefor.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

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

SECTION 1. Section 1012 of the Military and Veterans Code is amended to read:

1012. The home is for aged and disabled persons who served in the armed forces of the United States during a war period or period of hostility, as defined by law, or in time of peace in a campaign or

CHAPTER 136

An act to amend Section 11161.5 of the Penal Code, relating to child abuse.

[Approved by Governor May 11, 1978. Filed with Secretary of State May 12, 1978.]

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

SECTION 1. Section 11161.5 of the Penal Code is amended to read:

11161.5. (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, by any peace officer, or by any probation officer, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, administrator of a public or private summer day camp or child care center, social worker, peace officer, or probation officer, from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of

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Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and with the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the person knew or should have known that the report was false.

No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department.

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CHAPTER 5. DISESTABLISHMENT

36580. The city council may disestablish an area by ordinance after a hearing before the city council.

The city council shall adopt a resolution of intention to disestablish the area at least 15 days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

36581. Upon disestablishment of an area, any proceeds of the assessments or charges or the assets acquired with such proceeds, shall be subject to disposition as the city council shall determine.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV and shall go into immediate effect. The facts constituting such necessity are:

Parking and business improvement areas provide vital services which are necessary for the benefit of the business and commercial activity of the state. In order for these vital services not to be discontinued because of a lack of revenue, it is necessary that this act take effect immediately.

CHAPTER 373

An act to amend Sections 2491, 2507, 2532.2, 2537, 2736.5, 3906, 6787, 9889.61, 10100, 10153.7, 10156, 10156.2, 10171, 10171.2, 10201, 10209.5, 10210, 10214.5, 10215, 10216.5, 10239.35, 17910, 20880.5, and 23957 of, to amend and renumber Sections 2160, as amended and renumbered by Chapter 1161 of the Statutes of 1978, 2525.17, as added by Chapter 267 of the Statutes of 1975, 2530, as added by Chapter 1191 of the Statutes of 1977, 24045.3, as added by Chapter 400 of the Statutes of 1975, the heading of Article 12 (commencing with Section 850) of Chapter 1 of Division 2 of, and the heading of Article 3 (commencing with Section 7339) of Chapter 10 of Division 3 of, to add Article 10.5 (commencing with Section 725) to Chapter 1 of Division 2 of, and to repeal Sections 700, as added by Chapter 509 of the Statutes of 1977, 2193.78, 7327, 7328, 7430.5, 7514.2, as added by Chapter 892 of the Statutes of 1974, 7514.2, as added by Section 2 of Chapter 1214 of the Statutes of 1974, and 10206.5 of, the Business and Professions Code, to amend Sections 3334, and 5110 of, and to repeal Sections 22.3, 227aa, and 718c, Title 4 (commencing with Section 504) of Part 4 of Division 1, the heading of Title 7 of Part 4 of Division 2, as enacted in 1872, Title 11 (commencing with Section 2527) of Part 4 of Division 3, and the heading of Chapter 4 of Title 14 of Part 4 of Division 3, as enacted in 1872, of, the Civil Code, to amend Sections 337.15, 682.1, and 690.3 of, to add Section 1062.5 to, and to repeal Section 583.1 of, the Code of Civil Procedure, to amend Section 6106 of the Commercial Code, to amend Sections 6321, 7235, 14073, 15507, and 25013 of, and to repeal Part 9 (commencing with Section 25800)

of Division 1 of Title 4 of, the Corporations Code, to amend Sections 16404, 16405, 16409, 17728, 22727, 23010, 42840, 45105, 49071, 52314, 56038, 59201, 66017, 81165, 81363.5, 81523, 81528, 81529, 81530, 87214, 87483, 87603, 87662, 87781, 89304, and 94121 and the heading of Chapter 3 (commencing with Section 41300) of Part 24, of, to amend and renumber Section 52331, as added by Chapter 549 of the Statutes of 1977, the heading of Article 7 (commencing with Section 42800) of Chapter 10 of Part 24, and the heading of Article 3 (commencing with Section 52045) of Chapter 6 of Part 28, of, to add a heading immediately preceding Section 17700, to, and Article 9 (commencing with Section 32380) to Chapter 3 of Part 19 of, and to repeal Section 52171.5 and Article 8 (commencing with Section 32370) of Chapter 3 of Part 19, as added by Chapter 1114 of the Statutes of 1978, of, the Education Code, to amend Section 707.7 of, and to repeal Section 15793 of, the Elections Code, to amend Sections 1237, 1503, and 18368 of the Financial Code, to amend Sections 5700 and 5701 of, to amend and renumber the heading of Article 1 (commencing with Section 7290) of Chapter 2 of Part 2 of Division 6 of, to add a heading immediately preceding Section 7256 of, and to repeal Section 8836.4 and Article 6 (commencing with Section 6550) of Chapter 5 of Part 1 of Division 6 of, the Fish and Game Code, to amend Sections 34592, 35971, 58382, 61832, 66681, and 67023, the heading of Article 2 (commencing with Section 7301) of Chapter 1 of Part 4 of Division 4, the heading of Article 3 (commencing with Section 34261) of Chapter 9 of Part 1 of Division 15 and the heading of Article 7 (commencing with Section 36991) of Chapter 2 of Part 3 of Division 15, of, and to amend and renumber Section 14670 of, the Food and Agricultural Code, to amend Sections 7.5, 7.6, 7.8, 6253, 7465, 11011.1, 11427, 14876, 14998.7, 16260, 16280, 16304, 16304.6a, 16430, 18021.7, 18051, 20009.1, 20930.85, 21228, 25831, 27281, 27285, 27288.1, 27491.5, 31595.2, 31836.1, 35225, 35421, 45308.3, 50926, 51082, 51100, 53609, 53735, 54307, 70045.77, and 82028 and the heading of Part 5 (commencing with Section 22751) of Division 5 of Title 2 of, to amend and renumber Sections 8220, 8221, 8222, 8223, 8224, and 8225, all as added by Chapter 579 of the Statutes of 1977, 8524, as amended and renumbered by Chapter 1625 of the Statutes of 1967, 50280 and 50281, both as added by Chapter 1232 of the Statutes of 1972, 68513, as added by Chapter 1126 of the Statutes of 1974, 68513, as added by Chapter 1266 of the Statutes of 1974, 68514, as added by Chapter 733 of the Statutes of 1974, and 74694, as added by Chapter 1474 of the Statutes of 1976, the heading of Chapter 8 (commencing with Section 4500) of Division 5 of Title 1, the heading of Chapter 8 (commencing with Section 5700) of Division 6 of Title 1, the heading of Chapter 17.5 (commencing with Section 7301) of Division 7 of Title 1, the heading of Chapter 11 (commencing with Section 54965) of Part 1 of Division 2 of Title 5 of, and the heading of Chapter 10 (commencing with Section 54970) of Part 1 of Division 2 of Title 5 of, and to repeal Section 22201.7, as added by Chapter 107 of the Statutes of 1973, and Chapter 2.5 (commencing with Section 8110)

decisions. Such decisions shall be made in accordance with policies approved by a majority of the total membership of the board.

SEC. 250. Section 11050.5 of the Penal Code, as added by Section 2.5 of Chapter 790 of the Statutes of 1978, is repealed.

SEC. 251. Section 11161.5 of the Penal Code is amended to read:

11161.5. (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, by any peace officer, or by any probation officer, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, administrator of a public or private summer day camp or child care center, social worker, peace officer, or probation officer, from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and with the juvenile probation department as provided in this section.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the person knew or should have known that the report was false.

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No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 300 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 272 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department.

SEC. 252. Section 13517 of the Penal Code, as added by Chapter 1225 of the Statutes of 1978, is amended and renumbered to read:

13518. (a) The commission shall prepare guidelines establishing standard procedures which may be followed by police agencies in the detection, investigation, and response to cases in which a minor is a victim of an act of abuse or neglect prohibited by this code. The guidelines shall include procedures for determining whether or not a child should be taken into protective custody.

(b) The course of training leading to the basic certificate issued by the commission shall, not later than July 1, 1979, include adequate

Public Resources Code is repealed.

SEC. 619. The heading of Division 10 of the Public Resources Code is repealed.

SEC. 620. The heading of Chapter 1 of Division 10 of the Public Resources Code is repealed.

SEC. 621. The heading of Chapter 2 of Division 10 of the Public Resources Code is repealed.

SEC. 622. The heading of Chapter 3 of Division 10 of the Public Resources Code is repealed.

SEC. 623. The heading of Chapter 2 (commencing with Section 11300) of Division 5 of the Vehicle Code, as added by Chapter 3 of the Statutes of 1959, is repealed.

SEC. 624. The heading of Chapter 2 of Part 4 of Division 11 of the Water Code is repealed.

SEC. 625. The heading of Article 4 of Chapter 5 of Part 5 of Division 11 of the Water Code is repealed.

SEC. 626. The heading of Chapter 2.5 of Part 8 of Division 12 of the Water Code is repealed.

SEC. 627. The heading of Article 1 of Chapter 2.5 of Part 8 of Division 12 of the Water Code is repealed.

SEC. 628. Any section of any act enacted by the Legislature during the 1979 portion of the 1979–80 Regular Session, which takes effect on or before January 1, 1980, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether such act is enacted prior to or subsequent to this act.

CHAPTER 374

An act to amend Section 44270 of the Education Code, relating to certification requirements.

[Approved by Governor July 27, 1979. Filed with Secretary of State July 27, 1979.]

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

SECTION 1. Section 44270 of the Education Code is amended to read:

44270. The minimum requirements for the services credential with a specialization in administrative services are all of the following:

(a) The possession of a valid teaching credential issued under the law and rules and regulations in effect on or before December 31, 1971, requiring the possession of a baccalaureate degree, or as specified in Section 44259, or as specified in Section 44260 provided the applicant also possesses a baccalaureate degree, or a services

In order to help nonprofit organizations allocate more of their resources toward their stated purpose, it is necessary for this act to take effect immediately.

CHAPTER 855

An act to amend Section 11161.5 of the Penal Code, relating to child abuse.

[Approved by Governor August 30, 1980. Filed with Secretary of State August 31, 1980.]

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

SECTION 1. Section 11161.5 of the Penal Code is amended to read:

11161.5. (a) In any case in which any person coming within the provisions of subdivision (c) acquires in his or her professional capacity reasonable cause to believe that a minor has physical injury or injuries which appear to have been inflicted upon him or her by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he or she shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his or her whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him or her by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he or she shall file a report without delay with the local police authority having jurisdiction and with the juvenile probation department as provided in this section.

No person required by this section to make a report shall incur any civil or criminal liability as a result of making such report. No other person making a report of child abuse or molestation shall incur any civil or criminal liability as a result of making the report unless it can be proven that a false report was made and that the person knew or should have known that the report was false.

No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected

victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to all of the following: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his or her patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 300 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 272 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) shall be made to the county welfare department.

(c) The provisions of subdivision (a) are applicable to all of the following persons:

(1) Physicians and surgeons.
(2) Dentists and dental hygienists.
(3) Residents and interns.
(4) Podiatrists.
(5) Chiropractors.
(6) Optometrists.
(7) Persons licensed as marriage, family, and child counselors pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the Business and Professions Code.
(8) Psychologists.
(9) Religious practitioners.
(10) Registered nurses.

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(11) Superintendents, supervisors of child welfare and attendance, and certificated pupil personnel employees of any public or private school.

(12) Teachers and principals of any public or private school.

(13) Licensed day care workers.

(14) Administrators of public or private summer day camps or child care centers.

(15) Social workers.

(16) Peace officers.

(17) Probation officers.

(18) Priests, ministers, or rabbis of any religious denomination.

SEC. 2. Section 11161.5 of the Penal Code is amended to read:

11161.5. (a) In any case in which any person coming within the provisions of subdivision (c) acquires in his or her professional capacity reasonable cause to believe that a minor has physical injury or injuries which appear to have been inflicted upon him or her by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he or she shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, the minor's whereabouts and the character and extent of the injuries or molestation.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him or her by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, the director shall file a report without delay with the local police authority having jurisdiction and with the juvenile probation department as provided in this section.

No person required by this section to make a report shall incur any civil or criminal liability as a result of making such report. No other person making a report of a child abuse or molestation shall incur any civil or criminal liability as a result of making the report unless it can be proven that a false report was made and the person knew or should have known that the report was false.

No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

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Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice. If the records of the Department of Justice maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon, sexual molestation of, or infliction of any injury prohibited by the terms of Section 273a upon, the same minor or any other minor in the same family by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the department shall be made available to all of the following: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, marriage, family or child counselor, psychologist, or religious practitioner with regard to his or her patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code and the report is made to the local police authority having jurisdiction, then the report required by subdivision (a) of this section shall be made to the county welfare department.

(c) The provisions of subdivision (a) are applicable to all of the following persons:

(1) Physicians and surgeons.
(2) Dentists and dental hygienists.
(3) Residents and interns.
(4) Podiatrists.
(5) Chiropractors.
(6) Optometrists.
(7) Persons licensed as marriage, family, and child counselors pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the Business and Professions Code.
(8) Psychologists.
(9) Religious practitioners.
(10) Registered nurses.
(11) Superintendents, supervisors of child welfare and attendance, and certificated pupil personnel employees of any public or private school.
(12) Teachers and principals of any public or private school.
(13) Licensed day care workers.

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(14) Administrators of public or private summer day camps or child care centers.

(15) Social workers.

(16) Peace officers.

(17) Probation officers.

(18) Priests, ministers, or rabbis of any religious denomination.

(d) As used in this section, the words "sexual molestation" and "sexually molested" mean rape, incest, or lewd and lascivious acts perfromed on a minor or child. The fact that a minor 14 years of age or older is pregnant or has veneral disease, or is seeking services related to these conditions, does not in and of itself, mean that a child has been molested for purposes of this section.

When a minor under 14 years of age is seeking treatment or services for pregnancy or veneral disease, a report is authorized but not required. However, persons required to report child abuse shall recognize that children under 14 years of age who seek their services need special attention and examination.

SEC. 3. It is the intent of the Legislature, if this bill and Assembly Bill 781 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 11161.5 of the Penal Code, and this bill is chaptered after Assembly Bill 781, that Section 11161.5 of the Penal Code, as amended by Section 2 of Assembly Bill 781, be further amended on the effective date of this act in the form set forth in Section 2 of this act to incorporate the changes in Section 11161.5 proposed by this bill. Therefore, if this bill and Assembly Bill 781 are both chaptered and become effective on or before January 1, 1981, and Assembly Bill 781 is chaptered before this bill and amends Section 11161.5, Section 2 of this act shall become operative on the effective date of this act and Section 1 of this act shall not become operative.

CHAPTER 856

An act to amend Section 4453 of, and to add Section 9255.1 to, the Vehicle Code, relating to vehicles.

[Approved by Governor August 30, 1980. Filed with Secretary of State August 31, 1980.]

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

SECTION 1. Section 4453 of the Vehicle Code is amended to read:

4453. (a) The registration card shall contain upon the face thereof the date issued, the name and residence or business address of the owner and of the legal owner, if any, the registration number assigned to the vehicle, and a description of the vehicle as complete as that required in the application for registration of the vehicle.

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moved or operated upon a highway after January 1, 1982, unless the owner makes application for a license plate and, when received, attaches it to the motorized bicycle as provided in this article.

(c) Any motorized bicycle currently licensed pursuant to Division 16.7 (commencing with Section 39000) on July 1, 1981, may be operated upon a highway until July 1, 1982.

5038. The department shall establish a record system that provides for identification of stolen motorized bicycles.

5039. Notwithstanding any other provision of law, no dealer, manufacturer, salesman, or representative of motorized bicycles exclusively is required to be licensed or permitted pursuant to Chapter 4 (commencing with Section 11700) of Division 5.

SEC. 2. Section 39013 of the Vehicle Code is repealed.

SEC. 3. The sum of twenty-nine thousand five hundred sixty dollars ($29,560) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles to implement Article 8.1 (commencing with Section 5030) of Chapter 1 of Division 3 of the Vehicle Code.

SEC. 4. No appropriation is made by this act pursuant to Section 2231 or 2234 of the Revenue and Taxation Code or Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be because this act creates a new crime or infraction, changes the definition of a crime or infraction, or eliminates a crime or infraction. Furthermore, this act does not create any present or future obligation to reimburse any local agency or school district for any costs incurred because of this act.

CHAPTER 1071

An act to add Article 2.5 (commencing with Section 11165) to Chapter 2 of Title 1 of Part 4 of, and to repeal Sections 11161.5, 11161.6, and 11161.7 of, the Penal Code, relating to child abuse.

[Approved by Governor September 25, 1980. Filed with Secretary of State September 26, 1980.]

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

SECTION 1. Section 11161.5 of the Penal Code is repealed.

SEC. 2. Section 11161.6 of the Penal Code is repealed.

SEC. 3. Section 11161.7 of the Penal Code is repealed.

SEC. 4. Article 2.5 (commencing with Section 11165) is added to Chapter 2 of Title 1 of Part 4 of the Penal Code, to read:

Article 2.5. Child Abuse Reporting

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 261.5 (unlawful sexual intercourse), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent failure of a person having the care or custody of any child to protect a child from severe malnutrition or medically diagnosed nonorganic failure to thrive. For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in such situation that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of suspected physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential

care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

11166. (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she reasonably suspects has been the victim of child abuse shall report such suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or its emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any other person who had knowledge of or observes a child whom he or she reasonably suspects has been a victim of child abuse may report such suspected instance of child abuse to a child protective agency.

(d) When two or more persons who are required to report are present and jointly have knowledge of a suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make such report.

(e) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any

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

(f) A county probation or welfare department shall immediately or as soon as practically possible report by telephone every instance of suspected child abuse as defined in Section 11165 reported to it to the law enforcement agency having jurisdiction over the case, and to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and shall send a written report thereof within 36 hours of receiving the information concerning the incident to that agency.

A law enforcement agency shall immediately or as soon as practically possible report by telephone every instance of suspected child abuse reported to it to county social services and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and shall send a written report thereof within 36 hours of receiving the information concerning the incident to such agency.

11167. (a) A telephone report of suspected child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led such person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the suspected case of child abuse.

(c) Persons who may report pursuant to subdivision (c) of Section 11166 are not required to include their names. The identity of all persons who report under this article shall be confidential and disclosed only by court order or between child protective agencies or the probation department.

11168. The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Such forms shall be distributed by the child protective agencies.

11169. A child protective agency shall forward to the Department of Justice a preliminary report in writing of every case of suspected child abuse which it investigates, whether or not any formal action is taken in the case. However, if after investigation the case proves to be unfounded no report shall be retained by the Department of Justice. If a report has previously been filed which has proved unfounded the Department of Justice shall be notified of that fact. The report shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the

Department of Justice.

11170. The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169 of any information maintained pursuant to Section 11110 which is relevant to the suspected instance of child abuse reported by the agency. The indexed reports retained by the Department of Justice shall be continually updated and shall not contain any unfounded reports. A child protective agency shall make such information available to the reporting medical practitioner, child custodian, or guardian ad litem appointed under Section 318 of the Welfare and Institutions Code, if he or she is treating or investigating a case of suspected child abuse.

When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

11171. (a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse and determining the extent of such child abuse.

(b) Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

11172. (a) No child care custodian, medical practitioner or nonmedical practitioner reporting a suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this section unless it can be proved that a false report was made and the person knew or should have known that the report was false. No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

(b) Any person who fails to report as required by this article an instance of child abuse which he or she knows to exist or reasonably should know to exist is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars ($500) or by both.

11174. The Department of Justice, in cooperation with the State

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Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in subdivision (g) of Section 11165, in group homes or institutions and shall ensure that every investigation of such alleged child abuse is conducted in accordance with such regulations and guidelines.

SEC. 5. In reenacting the child abuse reporting law, it is the intent of the Legislature to clarify the duties and responsibilities of those who are required to report child abuse. The new provisions are designed to foster cooperation between child protective agencies and other persons required to report. Such cooperation will insure that children will receive the collective judgment of all such agencies and persons regarding the course to be taken to protect the child's interest.

In enacting Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of the Penal Code, the Legislature recognizes that the reporting of child abuse and any subsequent action by a child protective agency involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child. Therefore, it is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline.

In repealing Sections 11161.5, 11161.6, and 11161.7 of, and in reenacting the Child Abuse Reporting Law in Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of, the Penal Code, it is not the intent of the Legislature to alter the holding in the decision of Landeros v. Flood (1976), 17 Cal. 3d 399, which imposes civil liability for a failure to report child abuse.

It is the intent of the Legislature to encourage each county welfare department to establish within the department a toll-free number for receiving reports of child abuse 24 hours a day, seven days a week.

It is the intent of the Legislature to encourage the board of supervisors of each county to establish a committee composed of representatives from the county welfare department, local law enforcement agencies, county probation department, county health department and other persons representative of the population to be served, and any other person the board of supervisors deems appropriate, which would establish guidelines for the sharing of information and the coordination of the investigation of cases of child abuse.

It is the intent of the Legislature to encourage the county welfare or probation departments to promptly perform for each mandated report they receive and each report received pursuant to subdivision (b) of Section 11166 a thorough assessment to determine all of the following:

(a) The composition of the family or household, including the name, address, age, sex, and race of each child named in the report, and any siblings or other children in the same household or in the

care of the same adults.

(b) Whether there is reasonable suspicion to believe that any child in the family, household, or child-care facility is being abused or neglected and a determination of the person or persons apparently responsible for the abuse or neglect.

(c) The immediate and long-term risk to each child if he or she remains in the existing environment.

(d) The protective treatment and ameliorative services that appear necessary to help prevent further child abuse or neglect.

SEC. 6. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act pursuant to these sections because the duties, obligations, or responsibilities imposed on local agencies or school districts by this act are such that related costs are incurred as part of their normal operating procedures, and because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1072

An act to add Section 1157.5 to the Health and Safety Code, and to amend Sections 16702 and 16704 of the Welfare and Institutions Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1980. Filed with Secretary of State September 26, 1980.]

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

SECTION 1. Section 1157.5 is added to the Health and Safety Code, to read:

1157.5. Upon request of the board of supervisors of any county which received public health services or funding, or both, during the fiscal year 1979–80 pursuant to Section 1157, the State Department of Health Services shall transfer the dollar value of such services or funding, or both, as an allocation to the county pursuant to Part 4.5 (commencing with Section 16700) of Division 9 of the Welfare and Institutions Code. For purposes of this section, the dollar value of such services or funding, or both, shall include the direct and indirect costs appropriated to the State Department of Health Services to provide public health services to the county pursuant to Section 1157 for the fiscal year preceding the effective date of the request to transfer funds, less any funds allocated from appropriations for child health and disability prevention programs as described in Article 3.4

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CHAPTER 1116

An act to amend Section 31592.2 of the Government Code, and to repeal Section 2 of Chapter 430 of the Statutes of 1980, relating to the County Employees Retirement Law of 1937, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1980. Filed with Secretary of State September 26, 1980.]

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

SECTION 1. Section 31592.2 of the Government Code is amended to read:

31592.2. In any county, earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies in interest earnings in other years, losses on investments, and other contingencies, except that, when such surplus exceeds 1 percent of the total assets of the retirement system, the board may transfer all, or any part, of such surplus in excess of 1 percent of the said total assets into county advance reserves for the sole purpose of payment of the cost of the benefits described in this chapter.

Where the board of supervisors has provided for the payment of all, or a portion, of the premiums, dues, or other charges for health benefits, Medicare, or the payment of accrued sick leave at retirement to or for all, or a portion, of officers, employees, and retired employees and their dependents, from the county general fund or other sources, the board of retirement may authorize the payment of all, or a portion, of payments of the benefits described in this paragraph from the county advance reserves.

SEC. 2. Section 2 of Chapter 430 of the Statutes of 1980 is repealed.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order for the benefits granted to retired employees prior to the enactment of Chapter 430 of the Statutes of 1980 to be continued, it is necessary for this act to take effect immediately.

CHAPTER 1117

An act to amend Section 12401 of the Health and Safety Code, to amend Sections 243, 273.5, 273a, 273d, 1026.5, 1170, 1170.1, 1203.01, 1203.2a, 2900, 3041.5, 3042, 3421, 4011.7, 4016.5, 4131.5, 4133, 4852.03, 4852.16, 5002, 5055 and 12420 of the Penal Code, and to amend

Sections 240, 1721, and 1802 of, and to add Section 5328.02 to, the Welfare and Institutions Code, relating to prison terms and youth and adult corrections.

[Approved by Governor September 25, 1980. Filed with Secretary of State September 26, 1980.]

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

SECTION 1. Section 12401 of the Health and Safety Code is amended to read:

12401. Every person who is found guilty of a felony as specified in this part is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment.

SEC. 2. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both. When it is committed against the person of a peace officer or fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

As used in this section, "peace officer" refers to any person designated as a peace officer by Section 830.1, by subdivisions (a) to (e), inclusive, of Section 830.2, Section 830.5, or by subdivision (a) of Section 830.6, as well as any policeman of the San Francisco Port Commission and each deputized law enforcement member of the Wildlife Protection Branch of the Department of Fish and Game.

(b) When it is committed against a person and serious bodily injury is inflicted on such person, the offense shall be punished by imprisonment in the county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

SEC. 3. Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person of the opposite sex with whom he or she is cohabiting, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 3 or 4 years, or in the county jail for not more than one year.

(b) Holding oneself out to be the husband or wife of the person

with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

SEC. 4. Section 273a of the Penal Code is amended to read:

273a. (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 3 or 4 years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

SEC. 5. Section 273d of the Penal Code is amended to read:

273d. Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 3 or 4 years, or in the county jail for not more than one year.

SEC. 6. Section 1026.5 of the Penal Code is amended to read:

1026.5. (a) (1) In the case of any person committed to a state hospital or other facility pursuant to Section 1026 or 1026.1, who committed a felony on or after July 1, 1977, the court shall state in the commitment order the maximum term of commitment, and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in this section. For the purposes of this section, "maximum term of commitment" shall mean the longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted, including the upper term of the base offense and any additional terms for enhancements and consecutive sentences which could have been imposed less any applicable credits as defined by Section 2900.5, and disregarding any credits which could have been earned under Sections 2930 to 2932, inclusive.

(2) In the case of a person committed to a state hospital or other facility pursuant to Section 1026 or 1026.1, who committed a felony prior to July 1, 1977, who could have been sentenced under Section 1168 or 1170 if the offense was committed after July 1, 1977, the Board of Prison Terms shall determine the maximum term of commitment which could have been imposed under paragraph (1), and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in subdivision (b). The

filed which shall conform to the provisions of this code and which shall be deemed to be an original complaint; and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him or her and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed.

SEC. 4. Neither this bill nor Chapter 1094 of the 1980 Statutes is intended to affect procedures governing a written notice to appear which are set forth in the Vehicle Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Some counties are unable to comply with the provisions of Chapter 1094 of the Statutes of 1980 because of a lack of funding for staff.

CHAPTER 29

An act to amend Section 11165 of the Penal Code, relating to child abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 7, 1981. Filed with Secretary of State May 8, 1981.]

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

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent failure of a person having the care or custody of any child to protect a child from severe malnutrition or medically diagnosed nonorganic failure to thrive. For the purposes of this chapter, a child receiving treatment by

spiritual means as provided in Section 16508 of the Welfare and Institutions Code shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in such situation that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of suspected physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

SEC. 2. This act is an urgency statute necessary for the

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immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The existing provisions of law are causing the overreporting of various acts unrelated to child abuse pursuant to Chapter 1071 of the Statutes of 1980, which is creating a detrimental impact upon the efforts of the Legislature to deal with the problem of child abuse. In order to remedy this situation as soon as possible, it is necessary that this act become effective immediately.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 30

An act relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 13, 1981. Filed with Secretary of State May 14, 1981.]

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

SECTION 1. Notwithstanding Section 39227 of the Education Code, the Governing Board of the San Ramon Valley Unified School District may use facilities known as Twin Creeks Elementary School. During the period of use authorized by this section, the building and related facilities shall not be subject to Article 3 (commencing with Section 39140) or Article 6 (commencing with Section 39210) of Chapter 2 of Part 23 of the Education Code.

The liability of the San Ramon Valley Unified School District and the members of its governing board for a dangerous condition in the Twin Creeks Elementary School during the period of use authorized by this section shall be determined by the provisions of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

This section shall remain in effect only until June 30, 1983, and as of such date is repealed, unless a later enacted statute, which is chaptered before June 30, 1983, deletes or extends such date.

SEC. 2. The Legislature finds and declares that a general act cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution to the operation of the Twin Creeks Elementary School and that special legislation is necessary. The facts constituting the necessity are:

CHAPTER 435

An act to amend Sections 11165, 11166, 11167, 11169, 11170, 11172, and 11174 of the Penal Code, relating to child abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1981. Filed with Secretary of State September 12, 1981.]

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

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation

such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

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

11166. (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency

immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

(f) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department and the agency given responsibility for investigation of

cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 3. Section 11167 of the Penal Code is amended to read:

11167. (a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led such person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.

(c) Persons who may report pursuant to subdivision (c) of Section 11166 are not required to include their names. The identity of all persons who report under this article shall be confidential and disclosed only when needed for court action initiated under Section 232 of the Civil Code, or Section 300 of the Welfare and Institutions Code, or in a criminal prosecution arising from alleged child abuse, or by court order or between child protective agencies.

SEC. 4. Section 11169 of the Penal Code is amended to read:

11169. A child protective agency shall forward to the Department of Justice a preliminary report in writing of every case of known or suspected child abuse which it investigates, other than cases coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, whether or not any formal action is taken in the case. However, if after investigation the case proves to be unfounded no report shall be retained by the Department of Justice. If a report has previously been filed which has proved unfounded the Department of Justice shall be notified of that fact. The report shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the Department of Justice.

SEC. 5. Section 11170 of the Penal Code is amended to read:

11170. The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169 of any information maintained pursuant to Section 11110 which is relevant to the known or suspected instance of child abuse reported by the agency. The indexed reports retained by the Department of Justice shall be continually updated and shall not contain any unfounded reports. A child protective agency shall make such information available to the reporting medical practitioner, child custodian, or guardian ad litem appointed under Section 318 of the

Welfare and Institutions Code, if he or she is treating or investigating a case of known or suspected child abuse.

When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

SEC. 6. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of the photographs.

(b) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars ($500) or by both.

SEC. 7. Section 11174 of the Penal Code is amended to read:

11174. The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in subdivision (f) of Section 11165, in group homes or institutions and shall ensure that every investigation of alleged child abuse coming within that definition is conducted in accordance with the regulations and guidelines.

SEC. 8. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 9. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act shall achieve maximum implementation, it is necessary that this act take effect at the earliest possible date.

CHAPTER 436

An act to amend Section 12403 of the Penal Code, relating to tear gas weapons, declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1981. Filed with Secretary of State September 12, 1981.]

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

SECTION 1. Section 12403 of the Penal Code is amended to read:

12403. Nothing in this chapter shall prohibit any person who is a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 from purchasing, possessing, transporting, or using any tear gas weapon, if such weapon has been certified as acceptable under Article 5 (commencing with Section 12450) of this chapter and if such person has satisfactorily completed a course of instruction approved by the Commission on Peace Officers Standards and Training in the use of tear gas.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Permitting peace officers presently in training to receive immediate instruction in off-duty use of tear gas and tear gas weapons will avoid the need for later additional training and to facilitate such training as soon as possible it is necessary that this act go into immediate effect.

CHAPTER 437

An act to amend Sections 2741, 2815, and 2815.5 of the Business and Professions Code, relating to registered nurses, and making an appropriation therefor.

[Approved by Governor September 11, 1981. Filed with Secretary of State September 12, 1981.]

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except that such time shall be extended by the department upon a showing of good cause.

SEC. 3. The provisions of law in effect prior to this act shall continue to be applicable with respect to periods of disability commencing prior to the effective date of this act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Experience has shown that the current time limit for filing an initial state disability insurance claim does not adequately protect the filing rights of many claimants. In order to extend the current time limit and thereby prevent any further loss of benefits to covered workers, and in order to alleviate the effects of extreme unemployment as soon as possible, it is necessary that this act go into effect immediately.

CHAPTER 905

An act to amend Sections 11165 and 11166 of the Penal Code, relating to child abuse.

[Approved by Governor September 10, 1982. Filed with Secretary of State September 13, 1982.]

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

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation

such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with

Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

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

11166. (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the

county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 906

An act to amend Section 23384 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 10, 1982. Filed with Secretary of State September 13, 1982.]

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

SECTION 1. Section 23384 of the Business and Professions Code is amended to read:

23384. Any licensed beer manufacturer, wine grower, brandy manufacturer, rectifier, or wholesaler may, in addition to the other privileges exercised under his or her license and in accordance with rules prescribed by the department sell tax-paid alcoholic beverages mentioned in the license of the licensee to nonlicensees having a fixed place of business or residence upon territory within this State which is maintained by the United States Government as a military or naval reservation or national park or veterans homes, and veterans homes maintained by the State of California, and Indian country or land dedicated for use by the Indians.

CHAPTER 907

An act to add and repeal Sections 35176.5 and 35176.6 of the Education Code, relating to schools.

[Approved by Governor September 10, 1982. Filed with Secretary of State September 13, 1982.]

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other than from the lessor's inventory, the lessee has the same rights under this chapter against the seller of the goods to the lessor that the lessee would have had under this chapter if the goods had been purchased by the lessee from the seller, and the seller of the goods to the lessor has the same duties and obligations under this chapter with respect to the goods that the seller would have had under this chapter if the goods had been purchased by the lessee from the seller.

(e) A lessor who re-leases goods to a new lessee and does not retake possession of the goods prior to consummation of the re-lease may, notwithstanding the provisions of Section 1793, disclaim as to that lessee any and all warranties created by this chapter by conspicuously disclosing in the lease that these warranties are disclaimed.

(f) A lessor who has obligations to the lessee with relation to warranties in connection with a lease of goods and the seller of goods to a lessor have the same rights and remedies against the manufacturer and any person making express warranties that a seller of the goods would have had if the seller had sold the goods to the lessee.

CHAPTER 1170

An act to amend Sections 11165 and 11172 of the Penal Code, relating to child abuse reporting.

[Approved by Governor September 15, 1984. Filed with Secretary of State September 17, 1984.]

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

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe

malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 1.5. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law

enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury).

"Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution, including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant

immunity from liability with respect to any other use of the photographs.

(b) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, medical practitioner, nonmedical practitioner, or an employee of a child protective agency may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision does not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(c) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars ($1,000) or by both.

SEC. 3. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant

immunity from this liability with respect to any other use of the photographs.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, medical practitioner, nonmedical practitioner, or an employee of a child protective agency may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision does not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars ($1,000) or by both.

SEC. 3.5. Section 1.5 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by both this bill and AB 2709. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1985, (2) each bill amends Section 11165 of the Penal Code, and (3) this bill is enacted after AB 2709, in which case Section 11165 of the Penal Code, as amended by AB 2709, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 4. Section 3 of this bill incorporates amendments to Section

11172 of the Penal Code proposed by both this bill and AB 2710. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 11172 of the Penal Code, and (3) this bill is enacted after AB 2710, in which case Section 2 of this bill shall not become operative.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1171

An act to amend Section 1770 of the Civil Code, relating to consumer protection.

[Approved by Governor September 15, 1984. Filed with Secretary of State September 17, 1984.]

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

SECTION 1. Section 1770 of the Civil Code is amended to read:

1770. The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(a) Passing off goods or services as those of another.

(b) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(c) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(d) Using deceptive representations or designations of geographic origin in connection with goods or services.

(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

(f) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(h) Disparaging the goods, services, or business of another by false or misleading representation of fact.

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carry out the provisions of this section.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1391

An act to amend Sections 1627.5 and 2727.5 of the Business and Professions Code, to amend Section 56.05 of the Civil Code, to amend Sections 1797.52, 1797.56, 1797.58, 1797.74, 1797.106, 1797.170, 1798, 1798.2, 1798.4, 1798.100, 1798.102, 1798.104, and 1799.2 of, to amend the heading of Article 1 (commencing with Section 1798.100) of Chapter 6 of Part 1 of Division 2.5 of, to add Sections 1797.59 and 1797.97 to, and to add Article 4 (commencing with Section 1798.180) to Chapter 6 of Part 1 of Division 2.5 of, the Health and Safety Code, and to amend Sections 402 and 11165 of the Penal Code, relating to emergency medical services.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

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

SECTION 1. Section 1627.5 of the Business and Professions Code is amended to read:

1627.5. No person licensed under this chapter, who in good faith renders emergency care at the scene of an emergency occurring outside the place of that person's practice, or who, upon the request of another person so licensed, renders emergency care to a person for a complication arising from prior care of another person so licensed, shall be liable for any civil damages as a result of any acts or omissions by that person in rendering the emergency care.

SEC. 2. Section 2727.5 of the Business and Professions Code is amended to read:

2727.5. A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care.

This section shall not grant immunity from civil damages when the person is grossly negligent.

SEC. 3. Section 56.05 of the Civil Code is amended to read:

56.05. For purposes of this part:

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code or any Emergency Medical Technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 23. Section 11165 of the Penal Code is amended to read:

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11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by

other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any Emergency Medical Technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 24. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

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(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes

or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution, including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any Emergency Medical Technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a

public agency.

SEC. 25. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 26. (a) Section 23 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by both this bill and AB 2702. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 11165 of the Penal Code, and (3) this bill is enacted after AB 2702, in which case Section 22 of this bill shall not become operative.

(b) Section 24 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by both this bill and AB 2709. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1985, (2) each bill amends Section 11165 of the Penal Code, and (3) this bill is enacted after AB 2709, in which case Section 11165 of the Penal Code, as amended by AB 2709, shall remain operative only until the operative date of this bill, at which time Section 24 of this bill shall become operative, and Section 22 of this bill shall not become operative.

(c) Section 25 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by this bill, AB 2702, and AB 2709. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1985, (2) all three bills amend Section 11165 of the Penal Code, and this bill is enacted after AB 2702 and AB 2709, in which case Section 11165 of the Penal Code, as amended by AB 2709, shall remain operative only until the operative date of this bill, at which time Section 25 of this bill shall become operative, in which case Sections 22, 23, and 24 shall not become operative.

CHAPTER 1392

An act to add and repeal Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code, relating to local government.

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SEC. 2. Section 190.9 is added to the Penal Code, to read:

190.9. In any case in which a death sentence may be imposed, all proceedings conducted after the effective date of this section in the justice, municipal, and superior courts, including proceedings in chambers, shall be conducted on the record with a court reporter present.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 4. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1423

An act to amend Section 767 of the Evidence Code, to amend Sections 273a, 273d, 868.5, 868.7, 1048, 1203.066, 1346, and 11166 of the Penal Code, and to amend Section 827 of the Welfare and Institutions Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

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

SECTION 1. Section 767 of the Evidence Code is amended to read:

767. (a) Except under special circumstances where the interests of justice otherwise require:

(1) A leading question may not be asked of a witness on direct or redirect examination.

(2) A leading question may be asked of a witness on cross-examination or recross-examination.

(b) The court may in the interests of justice permit a leading question to be asked of a child under 10 years of age in a case involving a prosecution under Section 273a, 273d, or 288 of the Penal Code.

SEC. 2. Section 273a of the Penal Code is amended to read:

273a. (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical

pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4, or 6 years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

SEC. 3. Section 273d of the Penal Code is amended to read:

273d. Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4, or 6 years, or in the county jail for not more than one year.

SEC. 4. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other provision of law, a prosecuting witness 16 years of age or under in a case involving a violation of Section ~~243.4,~~ 261, 273a, 273d, 285, 286, 288, 288a, 289, or 647a, or a violation of subdivision (1) of Section 314, shall be entitled for support to the attendance of a parent, guardian, or sibling of his or her own choosing, whether or not a witness, at the preliminary hearing and at the trial, during the testimony of the prosecuting witness. The person so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person is related to the prosecuting witness as a parent, guardian, or sibling and does not make notes during the hearing.

(b) If the person so chosen is also a prosecuting witness, the prosecution shall present, on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.

(c) The testimony of the person so chosen who is also a prosecuting witness shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during the person's testimony. Whenever the evidence given by the person would be subject to exclusion because given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later

established by the testimony of the prosecuting witness.

SEC. 5. Section 868.7 of the Penal Code is amended to read:

868.7. (a) Notwithstanding any other provision of law, the magistrate may, upon motion of the prosecutor, close the examination in the manner described in Section 868 during the testimony of a witness:

(1) Who is the complaining victim of child abuse as defined in Section 11165, or a sex offense, where testimony before the general public would be likely to cause serious psychological harm to the witness and where no alternative procedures, including, but not limited to, video taped deposition or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, are available to avoid the perceived harm.

(2) Whose life would be subject to a substantial risk in appearing before the general public, and where no alternative security measures, including, but not limited to, efforts to conceal his or her features or physical description, searches of members of the public attending the examination, or the temporary exclusion of other actual or potential witnesses, would be adequate to minimize the perceived threat.

(b) In any case where public access to the courtroom is restricted during the examination of a witness pursuant to this section, a transcript of the testimony of that witness shall be made available to the public as soon as is practicable.

This section shall remain in effect only until January 1, 1987, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1987, deletes or extends that date.

SEC. 6. Section 1048 of the Penal Code is amended to read:

1048. (a) The issues on the calendar shall be disposed of in the following order, unless for good cause the court directs an action to be tried out of its order:

(1) Prosecutions for felony, when the defendant is in custody.

(2) Prosecutions for misdemeanor, when the defendant is in custody.

(3) Prosecutions for felony, when the defendant is on bail.

(4) Prosecutions for misdemeanor, when the defendant is on bail.

(b) Notwithstanding subdivision (a), all criminal actions in which a minor is detained as a material witness, or in which the minor is the victim of the alleged offense, or in which any person is a victim of an alleged violation of Section 261, 264.1, 273a, 273d, 285, 286, 288, 288a, or 289, committed by the use of force, violence, or the threat thereof, shall be given precedence over all other criminal actions in the order of trial. In those actions, continuations shall be granted by the court only after a hearing and determination of the necessity thereof, and in any event, the trial shall be commenced within 30 days after arraignment, unless for good cause the court shall direct the action to be continued, after a hearing and determination of the necessity of the continuance, and states the findings for a determination of good cause on the record.

(c) Nothing in this section shall be deemed to provide a statutory right to a trial within 30 days.

SEC. 7. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person convicted of violating Section 288 when the act is committed by the use of force, violence, duress, menace, or threat of bodily harm.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288.

(3) A person convicted of a violation of Section 288 and who was a stranger to the child victim or made friends with the child victim for the purpose of committing an act in violation of Section 288, unless the defendant honestly and reasonably believed the victim was 14 years old or older.

(4) A person who used a weapon during the commission of a violation of Section 288.

(5) A person convicted of committing a violation of Section 288 and who has had a prior conviction of Section 261, 264.1, 267, 285, 288, or 289, of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or threat of great bodily harm, of assaulting another with intent to commit a crime specified in this paragraph in violation of Section 220, or a violation of Section 266.

(6) A person convicted of kidnapping the child victim in violation of either Section 207 or 209 and who kidnapped the victim for the purpose of committing a violation of Section 288.

(7) A person who is convicted of committing a violation of Section 288 on more than one victim at the same time or in the same course of conduct.

(8) A person who in violating Section 288 has substantial sexual conduct with a victim under the age of 11 years.

(9) A person who occupies a position of special trust and commits an act of substantial sexual conduct. "Position of special trust" means that position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the victim. Position of authority includes, but is not limited to, the position occupied by a natural parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraphs (7), (8), and (9) of subdivision (a) shall not apply when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the household.

(2) Imprisonment of the defendant is not in the best interest of the child.

(3) Rehabilitation of the defendant is feasible in a recognized treatment program designed to deal with child molestation, and if the defendant is to remain in the household, a program that is specifically designed to deal with molestation within the family.

(4) There is no threat of physical harm to the child victim if there is no imprisonment. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

The court shall order the psychiatrist or psychologist appointed pursuant to Section 288.1 to include a consideration of the factors specified in paragraphs (2), (3), and (4) in making his or her report to the court.

(d) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 8. Section 1346 of the Penal Code is amended to read:

1346. (a) When a defendant has been charged with a violation of Section 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, or 289, where the victim is a person 15 years of age or less, the people may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(d) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of the victim's testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(e) Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) Any videotape made pursuant to this section shall be made available to the prosecuting attorney, the defendant, and his or her attorney for viewing during ordinary business hours.

(g) The tape shall be destroyed after five years have elapsed from the date of entry of judgment; provided, however, that if an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been rendered.

SEC. 9. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department, the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 10. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) Except as provided in Section 828, a petition filed in any

juvenile court proceeding, reports of the probation officer, and all other documents filed in any such case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel; child protective agencies as defined in subdivision (k) of Section 11165 of the Penal Code; the district attorney; the minor who is the subject of the proceeding the minor's parents or guardian; the attorneys for those parties; and such other persons as may be designated by court order of the judge of the juvenile court upon filing a petition therefor. The district attorney and child protective agencies, as defined in subdivision (k) of Section 11165 of the Penal Code, also shall be entitled to inspect these documents upon the filing of a declaration under penalty of perjury stating that access to these documents is necessary and relevant in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any such records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) Notwithstanding subdivision (a), written notice of the filing of a petition in juvenile court, alleging that a minor of compulsory school age is a person using, selling, or possessing narcotics or a controlled substance, may be provided by the district attorney, within 48 hours, to the superintendent of the school district of attendance, pursuant to Section 48922 of the Education Code. The district attorney need not obtain a court order prior to providing this notice to the superintendent.

SEC. 11. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in any such case or made available to the probation officer in making his or her report, or to the judge, referee or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the minor who is the subject of the

proceeding, his or her parents or guardian, the attorneys for those parties, and such other persons as may be designated by court order of the judge of the juvenile court upon filing a petition therefor. The district attorney and child protective agencies, as defined in subdivision (k) of Section 11165 of the Penal Code, also shall be entitled to inspect these documents upon the filing of a declaration under penalty of perjury stating that access to these documents is necessary and relevant in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any such records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases dissemination of juvenile court records be as limited as possible consistent with the need to work with a student in an appropriate fashion, and the need to protect potentially vulnerable school staff and other students over whom school staff exercise direct supervision and responsibility.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school in kindergarten or grades 1 through 12 has been found by a court of competent jurisdiction to have used, sold, or possessed narcotics or a controlled substance or to have committed any crime listed in paragraphs (1) to (15), inclusive, or (17) to (19), inclusive, of subdivision (b) of Section 707 shall be provided by the court, within seven days, to the superintendent of the school district of attendance, which information shall be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisorial or disciplinary responsibility over the minor who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the student in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher,

counselor, or administrator under this subdivision shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b) the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Destroy This Record 12 Months After The Minor Returns To Public School. Unlawful Dissemination of This Information Is A Misdemeanor." No information transmitted by the superintendent pursuant to subdivision (b) shall be transmitted by the superintendent or by any teacher, counselor, or administrator to any other person more than 12 months after receipt of the original notice from the court or more than 12 months after the minor returns to public school, whichever occurs last. Any information received from the court shall be destroyed by school authorities 12 months after its receipt from the court or 12 months after the minor returns to public school, whichever occurs last. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to insure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred and shall specify the date by which the record will be destroyed.

(e) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit

any notice or information required under subdivision (b).

(f) This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before that date deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1991, pursuant to Section 9611 of the Government Code, Section 827 of the Welfare and Institutions Code, as amended by Section 4 of Chapter 1103 of the Statutes of 1982, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 12. Section 11 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by both this bill and AB 2481. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 827 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2481, in which case Section 10 of this bill shall not become operative.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the criminal justice system to more effectively address the serious problems raised by the recent increase in prosecutions of crimes related to child abuse, it is necessary that this act take effect immediately.

SEC. 14. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 15. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 16. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

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CHAPTER 1424

An act to add Chapter 9 (commencing with Section 13880) to Title 6 of Part 4 of the Penal Code, relating to prosecutions, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

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

SECTION 1. Chapter 9 (commencing with Section 13880) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 9. CALIFORNIA MAJOR NARCOTIC VENDORS PROSECUTION LAW

13880. The Legislature finds and declares that the production and sale of narcotics is an ever increasing problem because of the substantial illicit profits derived therefrom. The Legislature further finds and declares that a substantial and disproportionate amount of serious crime is associated with the cultivation, processing, manufacturing, and sale of narcotics.

The Legislature intends to support intensified efforts by district attorneys' offices to prosecute drug producers and sellers through organizational and operational techniques that have been proven effective in selected jurisdictions in this and other states.

13881. (a) There is hereby established in the Office of Criminal Justice Planning a program of financial and technical assistance for district attorneys' offices, designated the California Major Narcotic Vendors Prosecution Law. All funds appropriated to the Office of Criminal Justice Planning for the purposes of this chapter shall be administered and disbursed by the executive director of the office in consultation with the California Council on Criminal Justice, and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) The executive director is authorized to allocate and award funds to counties in which the California Major Narcotic Vendors Prosecution Law is implemented in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney and approved by its board of supervisors. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Major Narcotic Vendors Prosecution Law, be made available to support the prosecution of felony drug cases. Funds available under this program shall not be subject to review, as specified in Section 14780 of the Government Code.

Opportunity in the identification of the projects to be funded by that agency, as well as to meet the purposes of this act.

CHAPTER 1613

An act to amend Sections 11107, 11165, and 11170 of the Penal Code, and to amend Section 326 of the Welfare and Institutions Code, relating to child abuse reporting, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

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

SECTION 1. Section 11107 of the Penal Code is amended to read:

11107. Each sheriff or police chief executive shall furnish all of the following information to the Department of Justice on standard forms approved by the department:

Daily reports of those misdemeanors and felonies that are required to be reported by the Attorney General including, but not limited to, forgery, fraud-bunco, bombings, receiving or selling stolen property, safe and commercial burglary, grand theft, child abuse, homicide, threats, and offenses involving lost, stolen, found, pledged, or pawned property.

The reports required by this section shall describe the nature and character of each such crime and note all particular circumstances thereof and include all additional or supplemental data. The Attorney General may also require that the report shall indicate whether or not the submitting agency considers the information to be confidential because it was compiled for the purpose of a criminal investigation of suspected criminal activities. The term "criminal investigation" includes the gathering and maintenance of information pertaining to suspected criminal activity.

SEC. 2. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or

distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any

person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution, including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2.2. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as

defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision

made by a parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution, including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's

department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2.4. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation

such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution, including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon,

psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any emergency medical technician I or II, or paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2.6. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described

in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in

out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 3. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all preliminary reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 318 of the Welfare and Institutions Code, if he or she is

treating or investigating a case of known or suspected child abuse.

When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

SEC. 4. Section 326 of the Welfare and Institutions Code is amended to read:

326. For the purposes of Child Abuse Prevention and Treatment Act grants to states (Public Law 93-247), in all cases in which there is filed a petition based upon alleged neglect or abuse of the minor, or in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the minor, the probation officer or a social worker who files a petition under this chapter shall be the guardian ad litem to represent the interests of the minor in proceedings under this chapter, unless the court shall appoint another adult as guardian ad litem. However, the guardian ad litem shall not be the attorney responsible for presenting evidence alleging child abuse or neglect in judicial proceedings. No bond shall be required from any guardian ad litem acting under this section.

SEC. 5. (a) The Legislature finds and declares that child abuse is a serious problem, as evidenced by the fact that the number of cases reported to the Attorney General each year pursuant to Section 11170 of the Penal Code has increased over 900 percent from 1974 through 1983. One of the major problems in treating and preventing child abuse is the need to quickly and accurately identify cases, which frequently involve family members or other individuals in close relationship to the victim.

(b) The Child Abuse Central Registry provided by Section 11170 of the Penal Code is an important source of information assisting local law enforcement officials and child protective agencies in identifying, apprehending, and prosecuting child abusers.

(c) The Department of Justice shall automate its Child Abuse Central Registry and shall develop criteria to periodically purge registry entries during the automation process.

SEC. 6. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of automating the Child Abuse Central Registry pursuant to Section 5 of this act.

SEC. 6.5. (a) Section 2.2 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by both this bill and AB 2702. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1985, but this bill becomes operative first, (2) each bill amends Section 11165 of the Penal Code, and (3) this bill is enacted after AB 2702, in which case Section 11165 of the Penal Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 2702, at which time Section 2.2 of this bill shall become operative, in which case Sections

2.4 and 2.6 of this bill shall not become operative.

(b) Section 2.4 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by both this bill and SB 1124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1985, but this bill becomes operative first, (2) each bill amends Section 11165 of the Penal Code, and (3) this bill is enacted after SB 1124, in which case Section 11165 of the Penal Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 1124, at which time Section 2.4 of this bill shall become operative, in which case Sections 2.2 and 2.6 of this bill shall not become operative.

(c) Section 2.6 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by this bill, AB 2702, and SB 1124. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1985, but this bill becomes operative first, (2) all three bills amend Section 11165 of the Penal Code, and (3) this bill is enacted after AB 2702 and SB 1124, in which case Section 11165 of the Penal Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 2702 and SB 1124, at which time Section 2.6 of this bill shall become operative, in which case Sections 2.2 and 2.4 shall not become operative.

SEC. 7. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 8. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to automate the Child Abuse Central Registry as soon as possible, it is necessary that this act go into immediate effect.

CHAPTER 1614

An act relating to youth, and making an appropriation therefor.

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needs placed in nonpublic, nonsectarian schools pursuant to Sections 56365 and 56366.

(2) The individual program placement costs specified in paragraph (1) shall be listed according to the placement categories of individuals with exceptional needs, including, but not limited to, all of the following categories:

(A) Full-day placement.

(B) Partial day placement.

(C) Residential placement within the state.

(D) Residential placement outside the state.

(b) Beginning September 15, 1985, the superintendent shall prepare a report of the data collected pursuant to subdivision (a) by September 15 of each year.

SEC. 4. Due to the unique circumstances affecting the Delano Joint Union High School District, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 6. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the Delano Joint Union High School District to meet its obligations for the 1984–85 fiscal year, and in order to obtain the data necessary to effectuate the intent of the Legislature declared in Section 1 of this act at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1718

An act to amend Section 11172 of, and to add Section 11166.5 to, the Penal Code, relating to child abuse reporting.

[Approved by Governor September 30, 1984. Filed with Secretary of State September 30, 1984.]

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

SECTION 1. Section 11166.5 is added to the Penal Code, to read:

11166.5. Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, or nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of a child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers, administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensed day care workers; administrators of community care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

SEC. 2. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by

this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars ($500) or by both.

(c) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting ageney with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing such access.

SEC. 3. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, medical practitioner, nonmedical practitioner, or an employee of a child protective agency may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars ($1,000) or by both.

SEC. 4. Section 3 of this bill incorporates amendments to Section 11172 of the Penal Code proposed by both this bill and AB 2702. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 11172 of the Penal Code, and (3) this bill is enacted after AB 2702, in which case Section 2 of this bill shall not become operative.

SEC. 5. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 6. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under

Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1719

An act to amend Section 86 of the Code of Civil Procedure relating to judicial arbitration.

[Approved by Governor September 30, 1984. Filed with Secretary of State September 30, 1984.]

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

SECTION 1. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) Each municipal and justice court has original jurisdiction of civil cases and proceedings as follows:

(1) In all cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to fifteen thousand dollars ($15,000) or less, except cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except the courts have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) In actions for dissolution of partnership where the total assets of the partnership do not exceed fifteen thousand dollars ($15,000); in actions of interpleader where the amount of money or the value of the property involved does not exceed fifteen thousand dollars ($15,000).

(3) In actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding fifteen thousand dollars ($15,000) or property of a value not exceeding fifteen thousand dollars ($15,000), paid or delivered under, or in consideration of, the contract; in actions to revise a contract where the relief is sought in an action upon the contract if the court otherwise has jurisdiction of the action.

(4) In all proceedings in forcible entry or forcible or unlawful detainer:

(A) In actions to recover possession of real property where rent is charged, and the amount of the last rental charged is one thousand dollars ($1,000) per month or less, and the whole amount of damages claimed is fifteen thousand dollars ($15,000) or less.

(B) In all other actions to recover possession of real property where the rental value is one thousand dollars ($1,000) per month or less, and the whole amount claimed is fifteen thousand dollars ($15,000) or less.

(5) In all actions to enforce and foreclose liens on personal property where the amount of the liens is fifteen thousand dollars

CHAPTER 189

An act to amend Section 11165 of the Penal Code, relating to child abuse reporting.

[Approved by Governor July 9, 1985. Filed with Secretary of State July 10, 1985.]

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

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any

person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social

worker or a probation officer, or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 190

An act to amend Section 7363 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor July 9, 1985. Filed with Secretary of State July 10, 1985.]

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

SECTION 1. Section 7363 of the Fish and Game Code is amended to read:

7363. This article shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to

subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (c) of this section, or an enhancement is imposed pursuant to Section 12022, 12022.4, 12022.5, 12022.6, 12022.7, or 12022.9 or the defendant stands convicted of felony escape from an institution in which he is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 12022, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9 if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or sodomy or oral copulation by force, violence, duress, menace or threat of great bodily harm as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 4. Section 12022.4 is added to the Penal Code, to read:

12022.4. Any person who, during the commission or attempted commission of a felony, furnishes or offers to furnish a firearm to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony shall, in addition and consecutive to the punishment prescribed by the felony or attempted felony of which the person has been convicted, be punished by an additional term of two years in the state prison. The additional term provided in this section shall not be imposed unless the fact of the furnishing is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 1087. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 1170.1 of the Penal Code, and (3) this bill is enacted after AB 1087, in which case Section 3 of this bill shall not become operative.

CHAPTER 464

An act to amend Section 11166.5 of the Penal Code, relating to child abuse reporting.

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[Approved by Governor September 4, 1985. Filed with Secretary of State September 5, 1985.]

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

SECTION 1. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, or nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers, administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; ~~licensed day care workers~~; administrators of community care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child

protective agencies as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in Section 11166.5 to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in Section 11166.5, the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

CHAPTER 465

An act to amend Sections 6011, 6015, 6021, 6024, 6163, 6169, 6170, and 6171 of, to add Sections 6161.1, and 6171.1 to, and to repeal Section 6164 of, the Business and Professions Code, relating to the State Bar of California.

[Approved by Governor September 4, 1985. Filed with Secretary of State September 5, 1985.]

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

SECTION 1. Section 6011 of the Business and Professions Code is amended to read:

6011. The board consists of 22 members and the President of the State Bar.

SEC. 2. Section 6015 of the Business and Professions Code is amended to read:

6015. No person is eligible for attorney membership on the board unless he or she is an active member of the State Bar and unless he or she maintains his or her principal office for the practice of law within the State Bar district from which he or she is elected.

One member of the board from State Bar District 7 elected in 1939, and any successor to this member, at the time of his or her election shall, and any member from the district may, maintain his or her principal office for the practice of law outside of the City of Los Angeles.

SEC. 3. Section 6021 of the Business and Professions Code is amended to read:

CHAPTER 1068

An act to add Section 4609 to the Civil Code, to add Section 11165.3 to the Penal Code, and to amend Sections 16507, 18964, 18964.1, 18964.5, 18964.6, and 18964.7 of the Welfare and Institutions Code, relating to children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1985. Filed with Secretary of State September 27, 1985.]

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

SECTION 1. Section 4609 is added to the Civil Code, to read:

4609. In accordance with Section 16507 of the Welfare and Institutions Code, family reunification services shall not be ordered as part of a child custody or visitation rights proceeding brought under this part.

SEC. 2. Section 11165.3 is added to the Penal Code, to read:

11165.3. (a) Notwithstanding the provisions of subparagraph (B) of paragraph (2) of subdivision (b) of Section 11165, on and after the effective date of this section, instead of the meaning given in that subparagraph sexual exploitation refers to any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator, or employee of a public or private residential home, residential school, or other residential institution.

(b) Notwithstanding the provisions of Section 11165, on and after the effective date of this section, the definition of abuse in out-of-home care made in that section is applicable to acts of an administrator or an employer of a public or private home, school, or institution only when the home, school, or institution is a residential institution. The definition is not applicable to an agency.

SEC. 3. Section 16507 of the Welfare and Institutions Code is amended to read:

16507. Family reunification services shall be provided or arranged for by county welfare department staff in order to reunite the child separated from his or her parent because of abuse, neglect, or exploitation. These services shall not exceed 12 months except as provided in subdivision (e) of Section 361. Family reunification services shall be available without regard to income to families whose

child has been adjudicated or is in the process of being adjudicated a dependent child of the court under the provisions of Section 300. Family reunification services shall include a plan for visitation of the child by his or her grandparents, where the visitation is in the best interests of the child and will serve to maintain and strengthen the family relationships of the child.

Family reunification services shall only be provided when a child has been placed in foster care.

SEC. 4. Section 18964 of the Welfare and Institutions Code is amended to read:

18964. The Office of Child Abuse Prevention shall contract for the operation of eight pilot projects to be based on in-home care, which shall be designed to avoid the out-of-home placement of abused or neglected children. These programs shall do all of the following:

(a) Provide in-home services utilizing licensed therapists who have at least a masters degree or the equivalent combination of education and experience.

(b) Provide intensive supplemental training to any staff therapist concerning therapeutic techniques local resources, and assure that the therapist has received the intensive supplemental training specified in Section 18964.5, before assigning any client to the therapist.

(c) Limit the number of families assigned to a therapist at any given time to a maximum of three, except that if a therapist team is utilized, the maximum number of families assigned to such a team shall be six at any given time.

(d) Offer services only to families where it appears that unless the program's services are provided, it will be necessary to place one or more children out of the home.

(e) Have the therapists assigned to a family, be on call and available to the family 24 hours a day, for a period appropriate to the family's needs, which is ordinarily a period of four to six weeks.

(f) Keep records, conduct internal evaluation, and cooperate with external evaluation as directed by the Office of Child Abuse Prevention.

To qualify for continued funding each agency shall meet all of the following annual minimum performance goals:

(1) Each agency shall demonstrate a success rate of 75 percent in avoiding out-of-home placement six months after intervention, with increased success rates in subsequent years.

(2) Each agency shall submit a detailed budget and annual audit.

(3) Each agency shall submit a letter of agreement from the local county department conducting the duties of the probation officer concerning dependent children as described in Section 300, indicating continued support and cooperation with the funded agency.

These pilot projects shall provide services to children who are within the jurisdiction of the juvenile court pursuant to Section 330,

or who are dependent children not taken from the physical custody of their parents or guardian pursuant to Section 364, or who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 361. The caseworker may return a dependent child removed from the home pursuant to Section 361, with appropriate pilot project services, in an appropriate case, pursuant to a new court order which may be granted on an ex parte basis. Each family receiving services shall have an open and active emergency response or family maintenance care plan.

Not more than one pilot project shall be located in any one county. At least one pilot project shall be in a rural county. For the purpose of this section, a rural county is a county with a population of less than 125,000 persons. Services to minority populations shall be reflected in the funding of programs. Each agency applying for funding shall submit with its application, a letter from the local county department conducting the duties of the probation department concerning dependent children described in Section 300, indicating a willingness to work cooperatively with the applicant agency and its proposed project. The selection of agencies to be funded shall be determined by the Office of Child Abuse Prevention. The projects shall be funded at an average level of not more than one hundred fifty thousand dollars ($150,000) per year, less the allowable department administrative costs described in Section 18969.

This section shall remain in effect only until January 1, 1989, and on that date is repealed, unless a later enacted statute chaptered prior to that date extends or deletes that date.

SEC. 5. Section 18964.1 of the Welfare and Institutions Code is amended to read:

18964.1. The Office of Child Abuse Prevention shall develop specific criteria to contract for the operation of three pilot projects, designed to maximize the safety, security, comfort, and quality of life of children aged 14 or under who are in self-care during hours of parental employment or other unavailability, by training families in how to accomplish these goals, and by other techniques designed to accomplish these goals that are consistent with the requests for proposals issued pursuant to Section 18964.5. Not more than one pilot project shall be located in any one county. At least one pilot project shall be located in a rural county. For the purpose of this section, rural counties are those having populations of under 125,000 persons. Geographic equity throughout the state shall be reflected in the funding of programs.

Each pilot project shall provide training to families who use self-care with young children. The selection of agencies to be funded shall be determined by the Office of Child Abuse Prevention. The projects shall be funded at an average level of not more than seventy-five thousand dollars ($75,000) per year, less allowable the departmental administrative costs described in Section 18969.

This section shall remain in effect only until January 1, 1989, and on that date is repealed, unless a later enacted statute chaptered

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prior to that date extends or deletes that date.

SEC. 6. Section 18964.5 of the Welfare and Institutions Code is amended to read:

18964.5. Contracts for pilot projects established under Sections 18964 and 18964.1 shall be entered into utilizing a competitive bid basis. Contracts may only be entered into by public or private nonprofit agencies, except for child protection agencies as defined in subdivision (k) of Section 11165 of the Penal Code.

Projects shall be evaluated through internal and external evaluation processes. The total cost of the external evaluation of the projects under both Sections 18964 and 18964.1 shall not exceed two hundred twenty-five thousand dollars ($225,000). A contract or contracts for evaluation shall be entered into utilizing a competitive bid basis, with no restriction on the categories of agencies that may bid. Requests for evaluation proposals shall be issued within 120 days of the effective date of the addition of this section, as enacted, during the 1985–86 Regular Session. Requests for pilot project proposals shall be issued within 90 days of the date the requests for evaluation proposals are issued.

The request for proposals for the pilot projects established under Section 18964 shall require that applicants identify a plan for acquiring and presenting intensive supplemental training concerning therapeutic techniques and related issues to any staff therapist of a project established under Section ~~18964~~ before any client is assigned to the therapist. This requirement recognizes that quality training is needed for the successful completion of the evaluation of these projects. The request for proposals shall also require that applicants identify a plan for continuing education of the staff therapists. The initial training shall be provided, and the continuing education may be provided, by individuals with recognized expertise in the development, establishment, and administration of in-home care programs similar to those described in Section 18964. Training may be provided by the applicant, with the review and approval of the Office of Child Abuse Prevention.

Agencies selected for funding shall receive funds in a timely manner, including an advance of funds when necessary to initiate a project.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute chaptered prior to that date, extends or deletes that date.

SEC. 7. Section 18964.6 of the Welfare and Institutions Code is amended to read:

18964.6. The Office of Child Abuse Prevention shall develop a system of written guidelines for funding and a system of performance standards for monitoring the effectiveness of the pilot programs. The standards shall consist of measurable objectives, including, but not limited to, a measure of success at avoiding the need for out-of-home placement and the cessation of abuse, neglect, or sexual exploitation. Each pilot project shall be evaluated in terms

of these standards. The effectiveness of programs of pilot projects funded pursuant to Sections 18964 and 18964.1 shall be evaluated by a public institution or private nonprofit agency or other qualified organization selected by the department. Funding for the evaluation of these pilot projects shall be provided from appropriations to the State Children's Trust Fund.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute chaptered prior to that date, extends or deletes that date.

SEC. 8. Section 18964.7 of the Welfare and Institutions Code is amended to read:

18964.7. During the 1987–88 fiscal year, the Auditor General shall evaluate compliance with the competitive process for contracting with agencies pursuant to Section 18964.5, including timely distribution of funds. In addition, the Auditor General shall evaluate compliance with Section 18964.6. The Auditor General shall report to the Legislature on his or her findings no later than December 31, 1987.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute chaptered prior to that date extends or deletes that date.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent the loss of federal funds under the federal child abuse and neglect grant program, it is necessary that this act go into immediate effect. In order to clarify the authority of the Office of Child Abuse Prevention to conduct competitive bidding for necessary pilot projects on a statewide basis, and to ensure proper training for the staff therapists of the projects established under Section 18964 of the Welfare and Institutions Code without delaying the commencement of these important projects, it also is necessary that this act go into immediate effect. In order to prevent ambiguity in provisions relating to child welfare services, and in order to avoid inappropriate ordering of family reunification services, it is necessary that this act go into immediate effect.

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CHAPTER 1069

An act to amend Sections 4701 and 4801.6 of, to add Section 4357.5 to, and to repeal Section 4801.6 of, the Civil Code, and to amend Section 11475.1 of the Welfare and Institutions Code, relating to support.

[Approved by Governor September 27, 1985. Filed with Secretary of State September 27, 1985.]

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

SECTION 1. Section 4357.5 is added to the Civil Code, to read:

4357.5. (a) In any action for child support that has been filed and served, the court may, without a hearing, make an order requiring a parent or parents to pay for the support, maintenance, and education of his or her minor child or children during the pendency of that action, pursuant to this section, in an amount as required by Section 4722 or, if the income of the obligated parent or parents is unknown to the applicant, then the minimum amount of support as provided in Section 11452 of the Welfare and Institutions Code.

An order under this section shall be known as an expedited support order.

As used in this section, "income and expense declaration" means the form for an income and expense declaration in family law matters adopted by the Judicial Council.

(b) An expedited support order shall be made by the superior court upon the filing of an application requesting that relief, setting forth the minimum amount the obligated parent or parents are required to pay pursuant to Section 4722 or pursuant to Section 11452 of the Welfare and Institutions Code, an income and expense declaration for both parents completed by the applicant, a worksheet setting forth the basis of the required amount and a proposed expedited support order.

Except in the event of a hearing concerning the application for an expedited support order, the amount of the expedited support order shall be the minimum amount the obligated parent is required to pay as set forth in the application. An expedited support order shall be effective 30 days after service on the obligated parent of the application, income and expense declarations, worksheet, a notice of consequences of failure to file a response, the proposed order, three blank responses to the application for an expedited support order and notice of hearing forms, and three blank income and expense declaration forms.

The expedited support order shall be effective on the obligated parent, without further action by the court, unless there is a response to the application for an expedited support order.

(c) Service on the obligated parent of the application and other required documents as set forth in subdivision (b) shall be by

of persons confined in a state hospital for purposes of mental health treatment pursuant to the Penal Code.

SEC. 2.75. The Legislature finds and declares that Department of Corrections prisoners subject to the provisions of this act are in a separate, distinct class from persons who have been committed by the State Department of Mental Health under the provisions of Section 1026 or 1370 of the Penal Code, or former Section 6316 of the Welfare and Institutions Code. Therefore, it is not intended that any provision of this act be construed in any way to effect the status of persons committed to the State Department of Mental Health under Section 1026 or 1370 of the Penal Code, or former Section 6316 of the Welfare and Institutions Code. Nor are the provisions of this act intended in any manner to affect decisional law interpreting those statutes.

SEC. 2.85. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

SEC. 3. Except as provided in paragraph (8) of subdivision (f) of Section 2960 of the Penal Code, this act shall become operative on July 1, 1986.

CHAPTER 1420

An act to add Section 11165.5 to the Penal Code, relating to crimes.

[Approved by Governor October 1, 1985. Filed with Secretary of State October 1, 1985.]

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

SECTION 1. Section 11165.5 is added to the Penal Code, to read:

11165.5. As used in Sections 11165 and 11166.5, "child care custodian," in addition to the persons specified therein, means an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education. It also includes a classified employee of any public school who has been trained in the duties imposed by this article if the school has so warranted to the State Department of Education.

SEC. 2. School districts which do not train the employees specified in Section 11165.5 of the Penal Code in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is

not provided.

SEC. 3. The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1421

An act to amend Sections 39510 and 39512.5 of, and to repeal Section 39510.5 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 1, 1985. Filed with Secretary of State October 1, 1985.]

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

SECTION 1. Section 39510 of the Health and Safety Code is amended to read:

39510. (a) The State Air Resources Board is continued in existence in the Resources Agency. The state board shall consist of nine members.

(b) The members shall be appointed by the Governor with the consent of the Senate on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems. Five members shall have the following qualifications:

(1) One member shall have training and experience in automotive engineering or closely related fields.

(2) One member shall have training and experience in chemistry, meteorology, or related scientific fields, including agriculture or law.

(3) One member shall be a physician and surgeon or an authority on health effects of air pollution.

(4) One member shall be a public member.

(5) One member shall have the qualifications specified in paragraph (1), (2), or (3) or shall have experience in the field of air

CHAPTER 1528

An act to add Section 1596.889 to the Health and Safety Code, and to amend Sections 11165 and 11174 of the Penal Code, relating to child abuse.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

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

SECTION 1. Section 1596.889 is added to the Health and Safety Code, to read:

1596.889. In all proceedings conducted in accordance with Section 1596.887, the preponderance of the evidence standard shall apply.

SEC. 2. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to

the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse, or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care or child day care facility, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated

pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2.5. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or

encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or corporal punishment or injury, or the

willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care or child day care facility, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse presentation program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 3. Section 11174 of the Penal Code is amended to read:

11174. The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation

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guidelines for the investigation of abuse in out-of-home care, as defined in subdivision (f) of Section 11165, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

SEC. 3.5. Section 2.5 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by both this bill and AB 701. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 11165 of the Penal Code, and (3) this bill is enacted after AB 701, in which case Section 2 of this bill shall not become operative.

SEC. 4. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 6. No appropriation is made by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on school districts or local government. It is recognized, however, that school districts or local governments may make claims for reimbursement under Chapter 4 (commencing with Section 17550) of Part 7 of Division 4 of Title 2 of the Government Code.

CHAPTER 1529

An act relating to juvenile arson and firesetting, and making an appropriation therefor.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

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

SECTION 1. (a) There is in state government an advisory group entitled "The Task Force on Juvenile Arson and Firesetting," composed of members appointed as specified in subdivision (b).

(b) The State Fire Marshal or his or her representative shall be the chair of the task force. The Senate Committee on Rules shall appoint one person to represent the National Firehawk Foundation and one person to represent the California Conference of Arson Investigators. The Speaker of the Assembly shall appoint one person to represent psychologists and one person to represent parents of juvenile firesetters. In addition to these appointments, the Senate

formally declared.

(3) Whenever the United States is assisting the United Nations, in actions involving the use of the armed forces, to maintain or restore international peace and security.

(c) A member electing to receive credit for public service under this section shall pay the contributions and interest required pursuant to Section 20932, except that, the first subsequent period of service in membership as a state member, other than a university member, shall be used to determine the formula, rate, age applicable, and the compensation earnable.

(d) This section shall apply to a member only if the member elects to receive credit while he or she is a state member, other than a university member, and he or she is credited with at least 10 years of service as a state member, other than a university member, on the date of such election.

(e) The maximum public service credit which may be received pursuant to this section is five years.

(f) This section shall not apply to any member receiving military retirement pay as described in Section 20809.1 or disability retirement pay as described in Section 20809.2.

(g) Except as provided in subdivision (f), this section shall apply to a state member, other than a university member, who leaves or has left employment with the state, subsequently meets or has subsequently met the conditions specified in subdivisions (a) and (b), and thereafter returns or thereafter has returned to service as a state member, other than a university member, is not entitled to receive the service credit pursuant to Section 20892.5 or 20894.5.

CHAPTER 1572

An act to amend Section 1228 of the Evidence Code, and to add Sections 11165.1 and 11165.2 to the Penal Code, relating to child abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

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

SECTION 1. Section 1228 of the Evidence Code is amended to read:

1228. Notwithstanding any other provision of law, for the purpose of establishing the elements of the crime in order to admit as evidence the confession of a person accused of violating Section 261, 264.1, 285, 286, 288, 288a, 289, or 647a of the Penal Code, a court, in its discretion, may determine that a statement of the complaining witness is not made inadmissible by the hearsay rule if it finds all of the following:

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(a) The statement was made by a minor child under the age of 12, and the contents of the statement were included in a written report of a law enforcement official or an employee of a county welfare department.

(b) The statement describes the minor child as a victim of sexual abuse.

(c) The statement was made prior to the defendant's confession. The court shall view with caution the testimony of a person recounting hearsay where there is evidence of personal bias or prejudice.

(d) There are no circumstances, such as significant inconsistencies between the confession and the statement concerning material facts establishing any element of the crime or the identification of the defendant, that would render the statement unreliable.

(e) The minor child is found to be unavailable pursuant to paragraph (2) or (3) of subdivision (a) of Section 240 or refuses to testify.

(f) The confession was memorialized in a trustworthy fashion by a law enforcement official.

If the prosecution intends to offer a statement of the complaining witness pursuant to this section, the prosecution shall serve a written notice upon the defendant at least 10 days prior to the hearing or trial at which the prosecution intends to offer the statement.

If the statement is offered during trial, the court's determination shall be made out of the presence of the jury. If the statement is found to be admissible pursuant to this section, it shall be admitted out of the presence of the jury and solely for the purpose of determining the admissibility of the confession of the defendant.

SEC. 2. Section 11165.1 is added to the Penal Code, to read:

11165.1. In addition to those persons specified in the definition of "child care custodian" contained in Section 11165, the term also includes any person who is an administrator or presentor of, or a counselor in, a child abuse prevention program in any public or private school.

SEC. 3. Section 11165.2 is added to the Penal Code to read:

11165.2. (a) On and after the effective date of this section, as used in this article, "medical practitioner" or "nonmedical practitioner" means a "health practitioner" as defined in this section.

(b) "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and

Professions Code, an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code, a state or county public health employee who treats a minor for veneral disease or any other condition, a coroner, or a religious practitioner who diagnoses, examines, or treats children.

SEC. 4. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary clarification in the law regarding the testimony of minors in child abuse cases and in order that child protective agencies may make information regarding reported cases of known or suspected child abuse instances available to reporting marriage, family, and child counselors at the earliest possible time, it is necessary that this bill take immediate effect.

CHAPTER 1573

An act to add Section 18041 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

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

SECTION 1. Section 18041 is added to the Revenue and Taxation Code, to read:

18041. (a) No gain shall be recognized with respect to a sale of a mobilehome park by the taxpayer to a majority or more of the residents of the mobilehome park if the taxpayer has not previously sold a mobilehome park to the residents thereof within the same taxable year and all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale.

(b) For purposes of this section:

(1) "Taxpayer" means the sole owner or any one of multiple owners of a mobilehome park.

(2) "Mobilehome park" means a mobilehome park as defined in Section 18214 of the Health and Safety Code.

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(b) Establishing an allowance for each district board, which the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials from any source.

(3) To purchase tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

Allowances established for school districts pursuant to this section shall be apportioned to districts as part of the special purpose apportionment in accordance with paragraph (5) of subdivision (a) of Section 14041.

The Superintendent of Public Instruction may establish a date each fiscal year by which districts shall notify the State Department of Education if they wish to operate under a different subdivision during the next fiscal year.

(c) Obtaining instructional materials in subsequent fiscal years.

SEC. 13. Section 84700.5 is added to the Education Code, to read:

84700.5. For the 1986–87 fiscal year, the amount computed pursuant to Section 84700 shall be increased by the amount reported by the Teachers' Retirement Board for that community college district under Section 23400.3, divided by the district's second principal apportionment average daily attendance for the 1985–86 fiscal year.

SEC. 14. Section 11.5 of this bill incorporates amendments to Section 46201 of the Education Code proposed by both this bill and AB 1855. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 46201 of the Education Code, and (3) this bill is enacted after AB 1855, in which case Section 11 of this bill shall not become operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1598

An act to add Sections 1522.1 and 1596.877 to the Health and Safety Code, and to amend Sections 11166.5, 11167, 11167.5, 11169, 11170, and 11172 of, and to add Sections 11165.6, 11166.1, and 11166.2 to, the Penal Code, relating to child abuse, and making an appropriation therefor.

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the Business and Professions Code, or emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or psychological assistants registered pursuant to Section 2913 of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

SEC. 5.1. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, or nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of a child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers, administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensees, administrators, and employees of community care facilities or child day care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code or emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or

psychological assistants registered pursuant to Section 2913 of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in Section 11166.5 to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in Section 11166.5, the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

SEC. 5.2. Section 11166.5 of the Penal Code is amended to read:

11166.5. Any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of a child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers, administrative officers, supervisors of child welfare and attendance, or certificated pupil

CHAPTER 248

An act to amend Sections 7108.5, 8706, 9741, 17300, and 25608 of, to amend and renumber Sections 5678, 5679, 5680, 9750, 19170, 24045.9, and 24757 of, to add Chapter 19.5 (commencing with Section 22440) to Division 8 of, and to repeal Chapter 20 (commencing with Section 22450) of Division 8 of, the Business and Professions Code, to amend Section 2945.1 of, to amend and renumber Section 43.5(a) of, to amend and renumber the heading of Chapter 6 (commencing with Section 1918) of Title 4 of Part 4 of Division 3 of, and to repeal the heading of Chapter 2a (commencing with Section 2980) of Title 14 of Part 4 of Division 3 of, the Civil Code, to amend Sections 697.590, 1985.3, and 2037 of, and to repeal Section 86.1 of, the Code of Civil Procedure, to amend Sections 44857, 48915, 49557, and 67300 of, to amend and renumber Sections 51880, 51881, 51882, and 69648.5 of, to repeal Sections 15104, 92660, 92660.5, 92661, and 92667 of, and to repeal the headings of Article 2 (commencing with Section 2520) of Chapter 12 of Part 2, Article 7 (commencing with Section 5400) of Chapter 3 of Part 4, Chapter 11 (commencing with Section 11000) of Part 7, Article 4 (commencing with Section 84070) of Chapter 1 of Part 50, and Article 4.5 (commencing with Section 92045) of Chapter 1 of Part 57 of, the Education Code, to amend Section 451 of the Evidence Code, to amend Sections 12534, 12582, and 12608.5 of the Food and Agricultural Code, to amend Sections 3501, 3541.5, 7090, 10527.2, 10549, 11010, 11346.52, 15325, 15333, 15355, 15382, 15384, 15385, 15972, 15973, 15975, 15980, 15982, 16304.6, 17622, 23150, 23285, 23358, 53637, 53638, 53639, 53640, 53641, 53643, 53645, 53650, 54957.6, 57075.5, and 66700 of, to amend and renumber Sections 6254.2, 7575, 14669, 15335.5, 19822.5, 27556, 31648.3, 35155.5, 53075, 53635.5, and 71603.5 of, to amend and renumber the headings of Chapter 26 (commencing with Section 7570) of Division 7 of Title 1, Chapter 11 (commencing with Section 8855) of Division 1 of Title 2, Article 4 (commencing with Section 14825) of Chapter 6 of Part 5.5 of Division 3 of Title 2, and Article 8 (commencing with Section 25730) of Chapter 7 of Division 2 of Title 3 of, to repeal Sections 11019, 15981, and 66714.9 of, to repeal the heading of Article 4 (commencing with Section 4380) of Chapter 4 of Division 5 of Title 1 of, and to add the heading of Article 5 (commencing with Section 18990) to Chapter 5 of Part 2 of Division 5 of Title 2 of, the Government Code, to amend Section 1202 of the Harbors and Navigation Code, to amend Sections 113, 1339.5, 1502, 1596.865, 1596.871, 1797, 1797.3, 1797.50, 1797.54, 1797.84, 1797.97, 1797.106, 1797.107, 1797.133, 1797.174, 1797.208, 1797.212, 1798.200, 1798.202, 1798.204, 1798.206, 1798.208, 1799.50, 1799.108, 11151, 11380, 12651, 25159.15, 25159.17, 25191.7, 25291, 44200, and 50177 of, to amend and renumber the headings of Article 5 (commencing with Section 4638,) Article 6 (commencing with Section 4641), and Article 7 (commencing with Section 4650) of Chapter 1 of Part 3 of Division 5 of, to repeal Sections 1271, 1418.2, 1418.6, 1424.1, 1427, 1428.1, 1430.5, 1439.5, 1439.7, and 1439.8 of, to

to be released on the date set, and the consequences of failure to meet such conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date; and suggest activities in which he might participate that will benefit him while he is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than (A) two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding or, (B) three years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for such action and shall offer the prisoner an opportunity for review of that action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2).

SEC. 167. Section 3605 of the Penal Code is amended to read:

3605. The warden of the State prison where the execution is to take place shall be present at the execution and must invite the presence of two physicians, the Attorney General of the State, and at least 12 reputable citizens, to be selected by him; and he or she shall at the request of the defendant, permit those ministers of the Gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under 18 years of age be allowed to witness the execution.

SEC. 168. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, or nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of a child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers, administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensees, administrators, and employees of community care facilities or child day care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code or emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or psychological assistants registered pursuant to Section 2913 of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the

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requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

SEC. 169. The heading of Chapter 1 (commencing with Section 13010) of Title 3 of Part 4 of the Penal Code is amended to read:

CHAPTER 1. DEPARTMENT OF JUSTICE

SEC. 170. The heading of Article 2 (commencing with Section 13010) of Chapter 1 of Title 3 of Part 4 of the Penal Code is amended and renumbered to read:

Article 1. Duties of the Department

SEC. 171. The heading of Article 3 (commencing with Section 13020) of Chapter 1 of Title 3 of Part 4 of the Penal Code is amended and renumbered to read:

Article 2. Duties of Public Agencies and Officers

SEC. 172. Section 707 of the Probate Code is amended to read:

707. (a) Except as provided in subdivision (b) or Section 707.5 or Section 720, all claims arising upon contract, whether they are due, not due, or contingent, and all claims for funeral expenses and all claims for damages for injuries to or death of a person or injury to property and all claims against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken or carried away or converted to his own use, the property of another person or committed any trespass on the real property of another person, shall be filed or presented within the time limited in the notice or as extended by Section 709. Any claim not so filed or presented is barred forever, unless it is made to appear by the affidavit of the claimant to the satisfaction of the court that (1) the claimant had not received notice, by reason of being out of the state, or (2) the claimant had in good faith filed a claim in another proceeding for the same decedent which has not been consolidated with the present proceeding, and in which letters had not been issued. In either event the claim may be filed or presented at any time within one year after the expiration of such prescribed period and before petition for final distribution has been filed; provided, neither the filing or presentation of such claim nor its later establishment, in whole or in part, shall make property distributed pursuant to court order or any payments properly made before filing or presentation of such claim subject to the claim. The clerk shall

SEC. 275. Section 16147 of the Welfare and Institutions Code, as added by Chapter 1460 of the Statutes of 1982, is amended and renumbered to read:

16144.3. Notwithstanding any other provision of law, the parent or parents of a person under 21 years of age who is domiciled in this state shall not be held financially responsible, nor shall financial contributions be requested or required of the parent or parents, for maternity home care, social service counseling, or other services related to pregnancy of the person which are provided by a licensed maternity home pursuant to this chapter.

SEC. 276. Section 10 is added to Chapter 30 of the Statutes of 1985, to read:

Sec. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Existing law, enacted in 1984, provides for a unified system of state regulated bar and inland pilotage for the Bays of San Francisco, San Pablo, and Suisun with provision for the continuation of inland pilots licenses for those existing inland pilots who apply for those licenses prior to March 31, 1985. In order to clarify these laws to make certain that the provisions relating to suspension and revocation of licenses continue to apply to this category of pilot, and in order to include drug abuse as a ground for suspension or revocation, it is necessary that this act take effect immediately.

SEC. 277. Any section of any act enacted by the Legislature during the 1986 calendar year, which takes effect on or before January 1, 1987, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to or subsequent to this act.

CHAPTER 249

An act to add Sections 40048 and 49068.5 to the Education Code, to amend Section 14685 of, and to add Section 13974.1 to, the Government Code, to amend Sections 208, 667.8, and 11114 of, and to add Sections 11114.1 and 11114.2 to, the Penal Code, and to add Section 221 to the Streets and Highways Code, relating to the Missing Children Act of 1985, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

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CHAPTER 1289

An act to amend Sections 11165.5, 11166, and 11167 of the Penal Code, relating to abuse.

[Approved by Governor September 28, 1986. Filed with Secretary of State September 29, 1986.]

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

SECTION 1. Section 11165.5 of the Penal Code is amended to read:

11165.5. (a) As used in Sections 11165 and 11166.5, "child care custodian," in addition to the persons specified therein, means an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education. It also includes a classified employee of any public school who has been trained in the duties imposed by this article if the school has so warranted to the State Department of Education.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

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

11166. (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's

office every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department, the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 3. Section 11167 of the Penal Code is amended to read:

11167. (a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led that person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.

(c) The identity of all persons who report under this article shall be confidential and disclosed only between child protective agencies, or to counsel representing a child protective agency, or to the district attorney in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to Section 318 of the Welfare and Institutions Code, or to the county counsel or district attorney in an action initiated under Section 232 of the Civil Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

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

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

SEC. 4. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made

pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

CHAPTER 1290

An act to add Section 66787.6 to the Government Code, to add Division 12.1 (commencing with Section 14500) to, and to repeal Sections 14530.5 and 14585 of, the Public Resources Code, and to add Sections 17153.5, 19278, and 24315 to the Revenue and Taxation Code, relating to beverage containers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1986. Filed with Secretary of State September 29, 1986.]

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

SECTION 1. Section 66787.6 is added to the Government Code, to read:

66787.6. (a) A local agency shall not deny a permit for the operation of a mobile recycling unit or reverse vending machine, which is certified, or has applied to be certified, as a recycling location pursuant to Division 12.1 (commencing with Section 14500) of the Public Resources Code, on private property located in an area that is zoned for commercial or industrial uses, and is located within, or to be located within, a convenience zone, if the operator of the mobile recycling unit or reverse vending machine submits written certification from the property owner granting permission to operate on that property from the property owner, unless the local agency specifically finds, and states its reasons for finding, that this operation will have a detrimental effect on public health, safety, or general welfare. If the certificate is revoked pursuant to Section 14541 of the Public Resources Code, the local agency permit shall automatically expire.

(b) Consistent with subdivision (a), a local agency may adopt reasonable rules and regulations, which are not inconsistent with Sections 14570 and 14571 of the Public Resources Code, concerning the operation of mobile recycling units and reverse vending machines, including, but not limited to, specifying the times and frequencies of operations and the posting of appropriate signs.

(c) For purposes of this section, "mobile recycling unit" means a properly licensed automobile, truck, trailer, or van which is used for the collection of recyclable material such as aluminum, glass, plastic, and paper.

(d) For purposes of this section, "reverse vending machine" has

and carbon dioxide and shall be designated on labels and in advertising as follows:

(1) The common or usual name of the characterizing flavor shall accompany the designation of the bottled water product type as defined in subdivision (b) of Section 26594.

(2) The product may be designated as "natural" only if it meets the requirements for the designation as defined in paragraphs (5) and (6) of subdivision (b) of Section 26594, and naturally derived flavors, extracts, or essences are used.

(b) Products labeled pursuant to this section shall comply with all other provisions of this article. Products with one type or one source of bottled water that are labeled pursuant to this section shall not be blended with water that is not bottled water or that is of another bottled water type.

26594.5. The department, prior to issuing a license, shall review all labels prepared pursuant to this article, and may require any changes in order to comply with the provisions of this article.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 640

An act to add Section 11174.3 to the Penal Code, relating to child abuse.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. The Legislature finds and declares that a number of victims of child abuse must be interviewed by representatives of child protective agencies during school hours, on school premises, regarding suspected child abuse. It is essential to minimize the trauma to the child attendant with such an interview and to thereby increase the likelihood of ascertaining the true facts in the case. Accordingly, it is desirable that the child should have the opportunity to have present at the interview an adult who is a member of the staff of the school with whom the child has a comfortable relationship.

SEC. 2. Section 11174.3 is added to the Penal Code, to read:

11174.3. (a) Whenever a representative of a child protective agency deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child's

home. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency shall inform the child of that right prior to the interview. The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible; however, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district, and each child protective agency shall notify each of its employees who participate in the investigation of reports of child abuse, of the requirements of this section.

SEC. 3. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 641

An act to amend Sections 69948, 70054.3, and 70056.7 of, and to add Section 70045.2 to, the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 69948 of the Government Code is amended to read:

69948. (a) The fee for reporting testimony and proceedings in

employer, the insurer shall file with the division immediately upon receipt, the original of the employer's report, which has been received from the insured employer.

(b) In every case involving a serious injury or illness, or death, in addition to the report required by subdivision (a), a report shall be made immediately by the employer to the Division of Occupational Safety and Health by telephone or telegraph.

SEC. 7. Section 6412 of the Labor Code is amended to read:

6412. No report of injury or illness required by subdivision (a) of Section 6409.1 shall be open to public inspection or made public, nor shall those reports be admissible as evidence in any adversary proceeding before the Workers' Compensation Appeals Board. However, the reports required of physicians by subdivision (a) of Section 6409 shall be admissible as evidence in the proceeding, except that no physician's report shall be admissible as evidence to bar proceedings for the collection of compensation, and the portion of any physician's report completed by an employee shall not be admissible as evidence in any proceeding before the Workers' Compensation Appeals Board.

SEC. 8. Section 6413.5 of the Labor Code is amended to read:

6413.5. Any employer or physician who fails to comply with any provision of subdivision (a) of Section 6409, or Section 6409.1, 6409.2, 6409.3, or 6410 may be assessed a civil penalty of not less than fifty dollars ($50) nor more than two hundred dollars ($200) by the director or his or her designee if he or she finds a pattern or practice of violations, or a willful violation of any of these provisions. Penalty assessments may be contested in the manner provided in Section 3725. Penalties assessed pursuant to this section shall be deposited in the General Fund.

SEC. 9. Section 6431 of the Labor Code is amended to read:

6431. Any employer who violates any of the posting or recordkeeping requirements as prescribed by regulations adopted pursuant to Sections 6408 and 6410, or who fails to post any notice required by Section 3550, shall be assessed a civil penalty of up to one thousand dollars ($1,000) for each violation.

CHAPTER 1020

An act to amend Section 11165 of, and to repeal Section 11165.1 of, the Penal Code, relating to child abuse.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

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(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for

religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care facility, child day care facility, or any other facility licensed to care for children, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the

Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2. Section 11165.1, as added to the Penal Code by Chapter 1572 of the Statutes of 1985, is repealed.

SEC. 3. Section 11165.1, as added to the Penal Code by Chapter 1593 of the Statutes of 1985, is repealed.

CHAPTER 1021

An act to amend Section 653f of the Penal Code, relating to crimes.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, is punishable by imprisonment in the county jail not more than one year or in the state prison, or by fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both such fine and imprisonment.

(b) Every person who solicits another to commit or join in the commission of murder is punishable by imprisonment in the state prison for three, six, or nine years.

(c) Every person who solicits another to commit rape by force or

CHAPTER 1418

An act to amend Sections 44010 and 87010 of the Education Code, and to amend Sections 290, 802, 868.5, 868.8, 11105.3, and 11165 of, and to amend and renumber Section 647a of, the Penal Code, relating to crimes.

[Approved by Governor September 30, 1987. Filed with Secretary of State September 30, 1987.]

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

SECTION 1. Section 44010 of the Education Code is amended to read:

44010. "Sex offense," as used in Sections 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

(a) Any offense defined in Section 261.5, 266, 267, 285, 286, 288, 288a, 647.6, or former Section 647a, subdivision 1, 2, 3, or 4 of Section 261, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in such sections was committed prior to September 15, 1961, to the same extent that such an offense committed prior to such date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if such offense was committed prior to September 15, 1961, to the same extent that such an offense committed prior to such date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state which,

corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(e) As used in this section "sex crime" means a conviction for a violation or attempted violation of Section 220, 261, 261.5, 264.1, 267, 272, 273a, 273d, 285, 286, 288, 288a, 289, 314, 647.6, or former Section 647a, or subdivision (d) of Section 647, or commitment as a mentally disordered sex offender under the provisions of former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(f) As used in this section, "drug crime" means any felony or misdemeanor conviction, within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of the California Uniform Controlled Substances Act contained in Division 10 (commencing with Section 11000) of the Health and Safety Code, provided that no record of a misdemeanor conviction shall be transmitted to the employer unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in subdivision (f) or (g) within the 10-year period.

(g) As used in this section, "crime of violence" means any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for any of the offenses specified in subdivision (c) of Section 667.5 or a violation or attempted violation of Chapter 3 (commencing with Section 207), Chapter 8 (commencing with Section 236), or Chapter 9 (commencing with Section 240) of Title 8 of Part 1, provided that no record of a misdemeanor conviction shall be transmitted to the employer unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in subdivision (f) or (g) within the 10-year period.

(h) Conviction for a violation or attempted violation of an offense committed outside the State of California is a sex crime, drug crime, or crime of violence if the offense would have been a crime as defined in this section if committed in California.

SEC. 9. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647.6 or former Section 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

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(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation

such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care or child day care facility, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse presentation program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means

any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 9.2. Section 3.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 1407. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 1407, in which case Section 3 of this bill shall not become operative.

SEC. 9.3. (a) Section 4.1 this bill incorporates amendments to Section 647a of the Penal Code proposed by both this bill and SB 1052. It shall only become operative if (1) both bills are enacted and become effective January 1, 1988, (2) each bill amends Section 647a of the Penal Code, and (3) AB 2441 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1052, in which case Sections 4, 4.2, and 4.3 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 647a of the Penal Code proposed by both this bill and AB 2441. It shall only become operative if (1) both bills are enacted and become effective January 1, 1988, (2) each bill amends Section 647a of the Penal Code, (3) SB 1052 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2441 in which case Sections 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 647a of the Penal Code proposed by this bill, SB 1052, and AB 2441. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1988, (2) all three bills amend Section 647a of the Penal Code, (3) this bill is enacted after SB 1052 and AB 2441, in which case Sections 4, 4.1, and 4.2 of this bill shall not become operative.

SEC. 9.5. Section 6.5 of this bill incorporates amendments to Section 868.5 of the Penal Code proposed by both this bill and AB 1068. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 868.5 of the Penal Code, and (3) this bill is enacted after AB 1068, in which case Section 6 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, 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. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1419

An act to add Section 22232 to the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 30, 1987. Filed with Secretary of State September 30, 1987.]

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

SECTION 1. Section 22232 is added to the Education Code, to read:

22232. (a) Any tax sheltered annuity program advertised, promoted, offered, or operated by the system shall provide for recovery of all costs and expenses of its own operation including, but not limited to, advertising, promotion, legal, accounting, recordkeeping, and investment costs and expenses and it shall not be subsidized, in any respect whatsoever, by the Teachers' Retirement Fund.

(b) The system shall not utilize its member mailing list for the purpose of transmitting information dedicated solely to advertising or marketing this program.

CHAPTER 1420

An act to add Article 9 (commencing with Section 12650) to Chapter 6 of Division 3 of Title 2 of the Government Code, relating to claims against the state.

[Approved by Governor September 30, 1987. Filed with Secretary of State September 30, 1987.]

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

SECTION 1. Article 9 (commencing with Section 12650) is added to Chapter 6 of Division 3 of Title 2 of the Government Code, to read.

Article 9. False Claims Actions

12650. For purposes of this article:

(a) "Claim" includes any request or demand for money, property,

of, a health benefits plan pursuant to this section, the employing county, by the 10th day of each month, shall remit to the Public Employees' Contingency Reserve Fund the total health benefits premium costs assumed by the judge. For a judge who retired from a county which is subject to the County Employees Retirement Law of 1937, the county shall deduct the health benefits cost from the judge's retirement allowance and remit that sum to the Public Employees' Contingency Reserve Fund. A county may charge a judge a reasonable administrative fee or additional premium amount for the costs incurred by the county in remitting payments pursuant to this section.

SEC. 3. Section 22816.4 is added to the Government Code, to read:

22816.4. Any judge in a county which is not a contracting agency under this part who is certified by the Judicial Council as available for regular judicial assignment and who has not retired or deferred retirement, shall be eligible to enroll in a health plan under this part upon assuming payment of the contributions required on account of his or her enrollment. Regular judicial assignment is defined as 26 weeks of service in any prior 52-week period. Eligibility for coverage shall terminate upon notice from the Judicial Council that a judge is no longer available for regular judicial assignment in the month following receipt of this notice.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1444

An act to amend Section 11165 of, to amend the heading of Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of, to add Section 11164 to, and to repeal Section 11174.5 of, the Penal Code, relating to child abuse.

[Approved by Governor September 30, 1987. Filed with Secretary of State September 30, 1987.]

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

SECTION 1. The heading of Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of the Penal Code is amended to read:

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Article 2.5. Child Abuse and Neglect Reporting Act

SEC. 1.5. Section 11164 is added to Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of the Penal Code, to read:

11164. (a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse. In any investigation of suspected child abuse, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

SEC. 2. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe

malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care or child day care facility, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury).

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"Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department. It does not include a school district police or security department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2.5. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

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(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation

such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care facility, child day care facility, or any other facility licensed to care for children, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department. It does not include a school district police or security department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 3. Section 11174.5 of the Penal Code is repealed.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 11165 of the Penal Code proposed by both this bill and SB 691. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 11165 of the Penal Code, and (3) this bill is enacted after SB 691, in which case Section 2 of this bill shall not become operative.

CHAPTER 1445

An act to add and repeal Article 15 (commencing with Section 14140) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code, and to repeal Article 7 (commencing with Section 44558) of Chapter 1 of Division 27 of the Health and Safety Code, relating to small business development, and making an appropriation therefor.

[Approved by Governor September 30, 1987. Filed with Secretary of State September 30, 1987.]

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

SECTION 1. Article 15 (commencing with Section 14140) is added to Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code, to read:

Article 15. Hazardous Waste Reduction

14140. For purposes of this article, "generator" means a borrower pursuant to this article or a party who produces hazardous waste and applies for financial assistance pursuant to this article to reduce hazardous waste as generated.

14141. There is hereby created in the State Treasury as part of the Small Business Expansion Fund created pursuant to Section 14029,

shall (1) be required to vote by mail ballot, and (2) in addition to the required residence address, provide a valid mailing address to the county clerk to be used in place of the residence address.

SEC. 3. Section 29207 is added to the Elections Code, to read:

29207. Any person in possession of information obtained pursuant to Section 604 for election purposes, or pursuant to Section 607 for election, scholarly or political research, or governmental purposes, who knowingly uses or permits the use of all or any part of that information for any purpose other than an election, scholarly or political research, or governmental purpose, or who furnishes that information for the use of another, unless the information is furnished for election, scholarly or political research, or governmental purposes, is guilty of a misdemeanor.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1459

An act to amend Sections 11166, 11166.5, 11167.5, and 11172 of, to add Sections 11165.4, 11165.7, 11165.8, 11165.9, 11165.10, 11165.11, and 11165.12 to, to repeal and add Sections 11165, 11165.1, 11165.2, 11165.3, 11165.5, and 11165.6 of, the Penal Code, and to amend Sections 16501.1 and 16504 of the Welfare and Institutions Code, relating to child abuse reporting.

[Approved by Governor September 30, 1987. Filed with Secretary of State September 30, 1987.]

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

SECTION 1. Section 11165 of the Penal Code is repealed.

SEC. 2. Section 11165 is added to the Penal Code, to read:

11165. As used in this article "child" means a person under the age of 18 years.

SEC. 3. Section 11165.1 of the Penal Code, as added by Chapter 1572 of the Statutes of 1985, is repealed.

SEC. 4. Section 11165.1 of the Penal Code, as added by Chapter 1593 of the Statutes of 1985, is repealed.

SEC. 5. Section 11165.1 is added to the Penal Code, to read:

11165.1. As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288

(lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

SEC. 6. Section 11165.2 of the Penal Code is repealed.

SEC. 7. Section 11165.2 is added to the Penal Code, to read:

11165.2. As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

SEC. 8. Section 11165.3 of the Penal Code is repealed.

SEC. 9. Section 11165.3 is added to the Penal Code, to read:

11165.3. As used in this article, "willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

SEC. 10. Section 11165.4 is added to the Penal Code, to read:

11165.4. As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code.

SEC. 11. Section 11165.5 of the Penal Code is repealed.

SEC. 12. Section 11165.5 is added to the Penal Code, to read:

11165.5. As used in this article, "abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or unlawful corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency.

SEC. 12.5. Section 11165.6 of the Penal Code is repealed.

SEC. 13. Section 11165.6 is added to the Penal Code, to read:

11165.6. As used in this article, "child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (unlawful corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors.

SEC. 14. Section 11165.7 is added to the Penal Code, to read:

11165.7. (a) As used in this article, "child care custodian" means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a licensed community care or child day care facility; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

SEC. 15. Section 11165.8 is added to the Penal Code, to read:

11165.8. As used in this article, "health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; a marriage, family and child counselor; any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code; a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; or a religious practitioner who diagnoses, examines, or treats children.

SEC. 16. Section 11165.9 is added to the Penal Code, to read:

11165.9. As used in this article, "child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department. It does not include a school district police or security department.

SEC. 17. Section 11165.10 is added to the Penal Code, to read:

11165.10. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 18. Section 11165.11 is added to the Penal Code, to read:

11165.11. As used in this article, "licensing agency" means the State Department of Social Services office responsible for the licensing and enforcement of the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code), the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code), and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code), or the county licensing agency which has contracted with the state for performance of those duties.

SEC. 19. Section 11165.12 is added to the Penal Code, to read:

11165.12. As used in this article, "unfounded report" means a report which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse as defined in Section 11165.6.

SEC. 20. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective

agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the

telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 21. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner,

or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or

treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

SEC. 22. Section 11167.5 of the Penal Code, as amended by Section 7.5 of Chapter 1598 of the Statutes of 1985, is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article shall be a misdemeanor punishable by up to six months in jail or by a fine of five hundred dollars ($500) or by both.

(b) Reports of suspected child abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.

(3) Persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an

out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse. The disclosure authorized by this section includes disclosure among hospital scan teams located in the same county.

(c) Nothing in this section shall be interpreted to require the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(d) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse.

SEC. 23. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, health practitioner, employee of a child protective agency, or commercial film and photographic print processor who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any such person who makes a report of child abuse known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be

brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, health practitioner, an employee of a child protective agency, or commercial film and photographic print processor may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

(e) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars ($1,000) or by both.

SEC. 24. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. Preplacement Preventive Services are those services which are designed to help children remain with their families by preventing or eliminating the need for removal.

(a) The Emergency Response Program is a component of Preplacement Preventive Services and is a response system which provides in-person response, 24 hours a day, seven days a week to reports of abuse, neglect, or exploitation, for the purpose of providing initial intake services and crisis intervention to maintain the child safely in his or her own home or to protect the safety of the child. County welfare departments shall respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days. An in-person response is not required when the county welfare department, based upon an assessment, determines

that an in-person response is not appropriate. An assessment includes collateral contacts, a review of previous referrals, and other relevant information, as indicated.

(b) The Family Maintenance Program is a component of Preplacement Preventive Services and is designed to provide time-limited protective services to prevent or remedy neglect, abuse, or exploitation, for the purposes of preventing separation of children from their families.

This section shall become operative on October 1, 1983, unless a later enacted statute extends or deletes that date.

SEC. 25. Section 16504 of the Welfare and Institutions Code is amended to read:

16504. Any child reported to the county welfare department to be endangered by abuse, neglect, or exploitation shall be eligible for initial intake and assessment services. Each county welfare department shall maintain and operate a 24-hour response system. An immediate in-person response shall be made by a county welfare department social worker in emergency situations in accordance with regulations of the department. The person making any initial response to a request for child welfare services shall consider providing appropriate social services to maintain the child safely in his or her own home. However, an in-person response is not required when the county welfare department, based upon an assessment, determines that an in-person response is not appropriate. An assessment includes collateral contacts, a review of previous referrals, and other relevant information, as indicated.

This section shall become operative on October 1, 1983, unless a later enacted statute extends or deletes that date.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, 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. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

imprisonment in the county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

CHAPTER 39

An act to amend Sections 11165.4, 11165.5, and 11165.6 of the Penal Code, relating to crime.

[Approved by Governor March 18, 1988. Filed with Secretary of State March 18, 1988.]

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

SECTION 1. Section 11165.4 of the Penal Code is amended to read:

11165.4. As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and neeessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an amount of force that is reasonable and necessary for a peace officer to quell a disturbance threatening physical injury to person or damage to property to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of the child, or to apprehend an escapee.

SEC. 2. Section 11165.5 of the Penal Code is amended to read:

11165.5. As used in this article, "abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or unlawful corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer to quell a disturbance threatening physical injury to person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control

of a child, or to apprehend an escapee.

SEC. 3. Section 11165.6 of the Penal Code is amended to read:

11165.6. As used in this article, "child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (unlawful corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors. "Child abuse" does not include an injury caused by reasonable and necessary force used by a peace officer to quell a disturbance threatening physical injury to person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of a child, or to apprehend an escapee.

CHAPTER 40

An act to repeal Article 3 (commencing with Section 12570) of Chapter 6 of Title 2 of Part 4 of the Penal Code, relating to firearms.

[Approved by Governor March 18, 1988. Filed with Secretary of State March 18, 1988.]

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

SECTION 1. Article 3 (commencing with Section 12570) of Chapter 6 of Title 2 of Part 4 of the Penal Code is repealed.

CHAPTER 41

An act to amend Section 22356 of the Vehicle Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 18, 1988. Filed with Secretary of State March 18, 1988.]

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

SECTION 1. Section 22356 of the Vehicle Code is amended to read:

22356. Whenever the Department of Transportation, after consultation with the Department of the California Highway Patrol, determines upon the basis of an engineering and traffic survey on

CHAPTER 269

An act to amend Sections 11166, 11166.2, 11169, 11174, and 11174.1 of, and to repeal Section 11166.1 of, the Penal Code, relating to child abuse and neglect.

[Approved by Governor July 6, 1988. Filed with Secretary of State July 6, 1988.]

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

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

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(2) Any supervisor or administrator who violates paragraph (1) is guilty of a misdemeanor which is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars ($1,000) or by both.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office

every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 2. Section 11166.1 of the Penal Code, as added by Chapter 1598 of the Statutes of 1985, is repealed.

SEC. 3. Section 11166.2 of the Penal Code is amended to read:

11166.2. In addition to the reports required under Section 11166, a child protective agency shall immediately or as soon as practically possible report by telephone to the appropriate licensing agency every known or suspected instance of child abuse, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department, when the instance of abuse occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. A child protective agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. A child protective agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

SEC. 4. Section 11169 of the Penal Code is amended to read:

11169. A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The report required by this section shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the Department of Justice.

The immunity provisions of Section 11172 shall not apply to the submission of a report by a child protective agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

SEC. 5. Section 11174 of the Penal Code is amended to read:

11174. The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of abuse in out-of-home care, as defined in Section 11165.5, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

SEC. 6. Section 11174.1 of the Penal Code is amended to read:

11174.1. The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

CHAPTER 270

An act to amend Sections 4103.5, ~~4423~~, 4423.1, 4423.2, 4423.3, and 4423.4 of, and to add Sections 4103.4 and 4412.5 to, the Public Resources Code, relating to fires.

[Approved by Governor July 6, 1988. Filed with Secretary of State July 6, 1988.]

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

SECTION 1. Section 4103.4 is added to the Public Resources Code, to read:

4103.4. "Open fire" means any fire, controlled or uncontrolled, including a campfire, burning outside of any structure, mobilehome, or living accommodation mounted on a motor vehicle. "Open fire" does not include portable lanterns designed to emit light resulting from a combustion process.

SEC. 2. Section 4103.5 of the Public Resources Code is amended to read:

4103.5. "Campfire" means a fire which is used for cooking, personal warmth, lighting, ceremonial, or aesthetic purposes, including fires contained within outdoor fireplaces and enclosed stoves with flues or chimneys, stoves using jellied, liquid, solid, or gaseous fuels, portable barbecue pits and braziers, or space heating devices which are used outside any structure, mobilehome, or living accommodation mounted on a motor vehicle. "Campfire" does not include portable lanterns designed to emit light resulting from a combustion process.

SEC. 3. Section 4412.5 is added to the Public Resources Code, to

($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. This act shall remain operative only until July 1, 1991, and as of January 1, 1992, is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends the dates upon which the bill becomes inoperative and is repealed.

Notwithstanding this section, whenever, prior to July 1, 1991, a law enforcement agency employee has filed a report pursuant to Section 7510 of the Penal Code, or a request for a human immunodeficiency virus (HIV) test has been filed pursuant to Section 7512 of the Penal Code, or any other procedure for requiring a test has been commenced pursuant to Title 8 (commencing with Section 7500) of the Penal Code, the proceedings shall be permitted to continue on or after July 1, 1991, until they have been concluded.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reduce the spread of AIDS in correctional institutions, as soon as possible, it is necessary that this act go into immediate effect.

CHAPTER 1580

An act to amend Sections 11165.8, 11166, and 11167.5 of, and to add Sections 11166.7 and 11166.8 to, the Penal Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 11165.8 of the Penal Code is amended to read:

11165.8. As used in this article, "health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; a marriage, family and child counselor; any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code; a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; an unlicensed marriage, family and child counselor intern

registered under Section 4980.44 of the Business and Professions Code; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; or a religious practitioner who diagnoses, examines, or treats children.

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

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child

abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 3. Section 11166.7 is added to the Penal Code, to read:

11166.7. (a) Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse, in the determination of whether child abuse contributed to death or whether child abuse had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse, including the designation of the cause and mode of death.

(c) In developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including but not limited to, the following:

(1) Experts in the field of forensic pathology.
(2) Pediatricians with expertise in child abuse.
(3) Coroners and medical examiners.
(4) Criminologists.
(5) District attorneys.
(6) Child protective services staff.
(7) Law enforcement personnel.
(8) Representatives of local agencies which are involved with child abuse reporting.
(9) County health department staff who deals with children's health issues.
(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

SEC. 4. Section 11166.8 is added to the Penal Code, to read:

11166.8. Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of

interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse cases so that incidents of child abuse are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

SEC. 5. Section 11167.5 of the Penal Code is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article shall be a misdemeanor punishable by up to six months in jail or by a fine of five hundred dollars ($500) or by both.

(b) Reports of suspected child abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.

(3) Persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse. The disclosure authorized by this section includes disclosure among hospital scan teams located in the same county.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(c) Nothing in this section shall be interpreted to require the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(d) This section shall not be interpreted to allow disclosure of any

reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse.

SEC. 6. The sum of thirty-five thousand dollars ($35,000) is hereby appropriated from the General Fund to the Department of Justice for expenditure from January 1, 1989, through June 30, 1989, for the purpose of developing the interagency child death team protocol pursuant to Section 11166.8 of the Penal Code. Any additional moneys needed from July 1, 1989, to January 1, 1991, to complete the protocol shall be funded through the Budget Act.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1581

An act to amend Section 4300 of the Civil Code, and to amend Sections 199.21, 199.22, 199.27, and 1603.1 of, and to add Sections 26 and 199.215 to, the Health and Safety Code, relating to AIDS.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 4300 of the Civil Code is amended to read:

4300. (a) Before any person, who is authorized to issue marriage licenses, shall issue the license, each applicant therefor shall file with him or her a certificate from a duly licensed physician stating that the applicant has been given the examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than 30 days prior to the date of issuance of the license, and that, in the opinion of the physician, the person either is not infected with syphilis, or if so infected, is not in a stage of that disease which is or may become communicable to the marital partner.

(b) The certificate shall also state whether the female applicant has laboratory evidence of immunological response to rubella (German measles). The certificate shall not contain evidence of response to rubella where the female applicant (1) is over 50 years of age, or (2) has had a surgical sterilization or (3) presents laboratory evidence of a prior test declaring her immunity to rubella.

(c) The certificate shall indicate that an HIV test, as defined in Section 26 of the Health and Safety Code, including any appropriate

implementation, and operational expenses, including the degree of cost effectiveness of each project. In addition, the report shall include a description of the manner in which the State Department of Education will use the demonstration programs as models for replication.

The evaluation report shall also set forth the number of waivers authorized by the Superintendent of Public Instruction under Section 58602 and the number of pupils who participated in programs for which waivers were granted.

Not later than November 1 of each year, the Superintendent of Public Instruction shall submit to the Department of Finance and the Legislative Analyst a synopsis of available data produced for the evaluation report.

SEC. 8. Section 58608 is added to the Education Code, to read:

58608. The Superintendent of Public Instruction shall approve demonstration projects for a period not to exceed three years. Based upon a review at the end of each three-year funding cycle, a project may be extended for an additional one year based on application by a program participant.

SEC. 9. Section 62000.5 of the Education Code is amended to read:

62000.5. The demonstration programs in English or language arts, mathematics, history or social science, foreign language, physical education, visual and performing arts, or science shall sunset on June 30, 1995.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reinstate the demonstration programs that became inoperative on June 30, 1990, it is necessary that this act take effect immediately.

CHAPTER 931

An act to amend Section 11166.5 of the Penal Code, relating to crimes.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her

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employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, and youth organizations who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers; or any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who

treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the penalty for a crime or infraction, changes the definition of a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, 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. If the statewide costs of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1603

An act to add Division 9.7 (commencing with Section 10900) to the Health and Safety Code, to amend Section 11166 of, and to add Section 11165.13 to, the Penal Code, relating to substance abuse.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

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

SECTION 1. Division 9.7 (commencing with Section 10900) is added to the Health and Safety Code, to read:

DIVISION 9.7. PERINATAL SUBSTANCE ABUSE

CHAPTER 1. STATE ADMINISTRATION

10900. By July 1, 1991, the Health and Welfare Agency shall develop and disseminate a model needs assessment protocol for pregnant and postpartum substance abusing women in conjunction with the appropriate professional organizations in the areas of hospital administration, substance abuse prevention and treatment, social services, public health, and appropriate state agencies, including the State Department of Social Services, the State Department of Health Services, State Department of Developmental Services, and the State Department of Alcohol and Drug Programs. This model may be utilized by hospitals and counties pursuant to Section 10901.

CHAPTER 2. COUNTY ADMINISTRATION

10901. (a) Each county shall establish protocols between county health departments, county welfare departments, and all public and private hospitals in the county, regarding the application and use of an assessment of the needs of, and a referral for, a substance exposed infant to a county welfare department pursuant to Section 11165.13 of the Penal Code.

(b) The assessment of the needs shall be performed by a health practitioner, as defined in Section 11165.8 of the Penal Code, or a medical social worker. The needs assessment shall be performed before the infant is released from the hospital.

(c) The purpose of the assessment of the needs is to do all of the following:

(1) Identify needed services for the mother, child, or family,

including, where applicable, services to assist the mother caring for her child and services to assist maintaining children in their homes.

(2) Determine the level of risk to the newborn upon release to the home and the corresponding level of services and intervention, if any, necessary to protect the newborn's health and safety, including a referral to the county welfare department for child welfare services.

(3) Gather data for information and planning purposes.

CHAPTER 3. MISCELLANEOUS

10902. It is the intent of the Legislature that funding for this chapter be provided in the annual Budget Act.

SEC. 2. Section 11165.13 is added to the Penal Code, to read:

11165.13. For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 10901 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to county welfare departments and not to law enforcement agencies.

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

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably

suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately

or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. Sections 2 and 3 of this act shall become operative on July 1, 1991.

respecting the consumer credit contract, a notice addressed to any cosigner at that address shall be deemed notice to all the cosigners residing at that address.

(f) Nothing in this section shall require any particular form or language with respect to a notice of delinquency sent to either a primary obligor or cosigner.

(g) Within a reasonable time after a creditor has reported to a credit reporting agency that a delinquency or delinquencies that have been reported to the consumer credit reporting agency and included in the cosigner's file maintained by the consumer credit reporting agency have been cured, the consumer credit reporting agency shall indicate in the file that the payment was made.

(h) Nothing in this section shall be construed to require notice of a delinquency to be provided to a cosigner in any instance not expressly specified in this section, or to provide notice to persons other than cosigners.

(i) This section shall become operative on July 1, 1992.

CHAPTER 132

An act to amend Sections 11165.7 and 11166.5 of the Penal Code, relating to child abuse reporting.

[Approved by Governor July 20, 1991. Filed with Secretary of State July 22, 1991.]

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

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

11165.7. (a) As used in this article, "child care custodian" means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a headstart teacher; a licensing worker or licensing evaluator; a public assistance worker; an employee of a child care institution including, but not limited to,

foster parents, group home personnel, and personnel of residential care facilities; a social worker , probation officer, or parole officer; an employee of a school district police or security department; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(d) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

SEC. 2. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact

and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; social workers, probation officers, or parole officers; employees of a school district police or security department; or any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family, and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family, and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family, and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed

on all application forms for a license or certificate printed on or after January 1, 1986.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 133

An act to amend Sections 116.220, 116.370, 116.610, and 116.770 of the Code of Civil Procedure, relating to small claims court.

[Approved by Governor July 20, 1991. Filed with Secretary of State July 22, 1991.]

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

SECTION 1. Section 116.220 of the Code of Civil Procedure is amended to read:

116.220. (a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivision (c), for recovery of money, if the amount of the demand does not exceed five thousand dollars ($5,000).

(2) Except as provided in subdivision (c), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars ($5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Section 1861.5 of the Civil Code if the amount of the demand does not exceed five thousand dollars ($5,000).

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to,

CHAPTER 1102

An act to add Section 33308.1 to the Education Code and to add Section 11165.14 to the Penal Code, relating to schools.

[Approved by Governor October 14, 1991. Filed with Secretary of State October 14, 1991.]

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

SECTION 1. The Legislature finds and declares the following:

(a) That child abuse comes in many forms and occurs under many conditions.

(b) That the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987, requires any child care custodian, health practitioner, or employee of a child protective agency who knows or reasonably suspects a child has been the victim of child abuse to report that abuse to a child protective agency. A child protective agency for purposes of the act is a police or sheriff's department, a county probation department, or a county welfare department.

(c) That the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987, authorizes any other person who knows or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse to report the known or suspected instance of child abuse to a child protective agency.

(d) That the Child Abuse and Neglect Reporting Act requires that child protective agencies investigate the reports received within their respective jurisdictions, which may include criminal and noncriminal complaints that are reported by school districts, county offices of education, and other private and public entities and individuals, and to report their findings to certain entities when those findings warrant a report.

SEC. 2. It is the intent of the Legislature that parents and guardians of school pupils be informed on how to recognize and how to report child abuse.

SEC. 3. It is further the intent of the Legislature that local child protective agencies, as defined by the Child Abuse and Neglect Reporting Act, upon receipt of a complaint by a parent or guardian of a pupil against a school employee, comply with the requirements of the Child Abuse and Neglect Reporting Act to investigate and, when appropriate, to send a report on a complaint that is substantiated, as defined in Section 11165.1 of the Penal Code, to the governing board of the school district or county office of education for its review.

SEC. 4. Section 33308.1 is added to the Education Code, to read:

33308.1. The State Department of Education shall adopt guidelines to be disseminated to parents or guardians of pupils that

describe the procedures that a parent or guardian can follow in filing a complaint of child abuse, as defined in Section 11165.6 of the Penal Code, with the school or a child protective services agency against a school employee or other person that commits an act of child abuse, as defined in Section 11165.6 of the Penal Code, against a pupil at a schoolsite.

SEC. 5. Section 11165.14 is added to the Penal Code, to read:

11165.14. The local child protective agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or a local child protective agency against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

SEC. 6. The governing board of a school district or county office of education shall upon request disseminate the guidelines adopted by the State Department of Education pursuant to Section 33308.1 of the Education Code to parents or guardians in the primary language of the parent or guardian. The governing board of a school district or county office of education is encouraged to inform a parent or guardian that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.6 of the Penal Code against a pupil at a schoolsite of the procedures for filing that complaint with local child protective agencies pursuant to the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987. In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the governing board shall provide an interpreter for that parent or guardian.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 459

An act to amend Sections 11165.7, 11166, 11166.5, and 11172 of, and to add Section 11165.15 to, the Penal Code, relating to child abuse.

[Approved by Governor August 9, 1992. Filed with Secretary of State August 10, 1992.]

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

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

11165.7. (a) As used in this article, "child care custodian" means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a headstart teacher; a licensing worker or licensing evaluator; a public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child

abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(d) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

SEC. 2. Section 11165.15 is added to the Penal Code, to read:

11165.15. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

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

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, or child visitation monitor who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, employee of a child protective agency, or child visitation monitor who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of, or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of

the following:

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

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

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

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

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

(d) Any other person who has knowledge of, or observes, a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately, or as soon as

practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 4. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any person who enters into employment as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include all of the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, employee of a child protective agency, or child visitation monitor who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school

who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; social workers, probation officers, or parole officers; employees of a school district police or security department; any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family, and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family, and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family, and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the

support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 5. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, or commercial film and photographic print processor who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any such person who makes a report of child abuse known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the

CHAPTER 346

An act to amend Sections 11165.4, 11165.5, and 11165.6 of the Penal Code, relating to child abuse reporting.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 11165.4 of the Penal Code is amended to read:

11165.4. As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 2. Section 11165.5 of the Penal Code is amended to read:

11165.5. As used in this article, "abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or unlawful corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 3. Section 11165.6 of the Penal Code is amended to read:

11165.6. As used in this article, "child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (unlawful corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors. "Child abuse" does not include an injury caused by

reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 347

An act to amend Section 56826 of the Government Code relating to local government.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 56826 of the Government Code is amended to read:

56826. (a) The commission shall not review a reorganization which includes an annexation to any city in Santa Clara County of unincorporated territory which is within the urban service area of the city if the reorganization is initiated by resolution of the legislative body of the city.

(b) The city council shall be the conducting authority for the reorganization and the proceedings for the reorganization shall be initiated and conducted as nearly as may be practicable in accordance with Part 4 (commencing with Section 57000).

The city council, in adopting the resolution approving the reorganization, shall make all of the following findings:

(1) That the unincorporated territory is within the urban service area of the city as adopted by the commission.

(2) That the county surveyor has determined the boundaries of the proposal to be definite and certain, and in compliance with the road annexation policies of the commission. The city shall reimburse the county for the actual costs incurred by the county surveyor in making this determination.

(3) That the proposal does not split lines of assessment or ownership.

(4) That the proposal does not create islands or areas in which it would be difficult to provide municipal services.

(5) That the proposal is consistent with the adopted general plan

upon those persons and corporations subject to that section for whom the commission establishes minimum or maximum rates or requires rates to be on file, up to a maximum of one-half of 1 percent of gross operating revenue, if the commission decides this increase is necessary to maintain adequate financing for the Transportation Rate Fund.

SEC. 2. This act is declaratory of existing law.

CHAPTER 510

An act to amend Sections 11166, 11166.5, and 11172 of, and to add Section 11165.16 to, the Penal Code, relating to child abuse and neglect reports.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 11165.16 is added to the Penal Code, to read:

11165.16. (a) For the purposes of this article, the following terms have the following meanings:

(1) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(2) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 607f or 607g of the Civil Code.

(b) No firefighter, animal control officer, or humane society officer shall be subject to the reporting requirements of this article unless he or she has received training in identification and reporting of child abuse equivalent to that received by teachers and child care custodians.

SEC. 1.5. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse

was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

(f) The reporting duties under this section are individual, and no

supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 2. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any person who enters into employment as a child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a

statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include all of the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, employee of a child protective agency, or child visitation monitor who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; social workers, probation officers, or parole officers; employees of a school district police or security department; any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined

in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family, and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family, and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family, and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The

person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 3. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, health practitioner, firefighter, animal control officer, humane society officer, employee of a child protective agency, child visitation monitor, or commercial film and photographic print processor who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any such person who makes a report of child abuse known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any child care custodian, health practitioner, firefighter, animal control officer, humane society officer, employee of a child protective agency, or child visitation monitor who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, health practitioner, firefighter, animal control officer, humane society officer, employee of a child protective agency, child visitation monitor, or commercial film and photographic print

California Constitution.

CHAPTER 1253

An act to amend Section 273a of the Penal Code, relating to crimes.

[Approved by Governor October 11, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 273a of the Penal Code is amended to read:

273a. (a) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or in the state ~~prison for 2, 4, or 6 years~~.

(2) Any person convicted under this subdivision who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or injury that results in death, or having the care or custody of any child, under circumstances likely to produce great bodily harm or death, willfully causes or permits that child to be injured or harmed, and that injury or harm results in death, shall receive a four-year enhancement for each such violation in addition to the sentence provided for that conviction. Nothing in this paragraph shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 192.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health may be endangered, is guilty of a misdemeanor.

CHAPTER 1263

An act to amend Section 6254 of the Government Code, to amend Section 12101 of the Health and Safety Code, and to amend Sections 273a, 487h, 11105.3, and 12305 of, and to add Section 12022.95 to, the Penal Code, relating to crime.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and

a person who is applying for a permit meets any of the criteria specified in subdivision (j) and shall either grant or deny clearance for a permit to be issued pursuant to the determination. The Department of Justice shall not disclose the contents of a person's records to any person who is not authorized to receive the information in order to ensure confidentiality.

SEC. 3. Section 273a of the Penal Code is amended to read:

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health may be endangered, is guilty of a misdemeanor.

SEC. 3.5. Section 273a of the Penal Code is amended to read:

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health may be endangered, is guilty of a misdemeanor.

(c) Any person who, having the care or custody of a minor child, assaults the child by means of force likely to produce great bodily injury, resulting in the child's death, is punishable in the state prison for a term of 15 years to life. Nothing in this subdivision shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 189.

SEC. 4. Section 487h of the Penal Code is amended to read:

Assembly Bill No. 295

CHAPTER 1080

An act to amend Sections 311, 311.1, 311.2, 311.3, 311.4, 311.11, 312.3, and 11166 of, and to add Sections 312.6 and 312.7 to, the Penal Code, relating to pornography.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 295, Baldwin. Pornography.

(1) Existing law includes provisions governing obscene matter and child pornography. A violation of these provisions is a crime.

This bill would exempt from these provisions a person or entity that solely provides access or connection to or from a facility, system, or network over which that person or entity has no control, as provided. The bill would also exempt from these provisions an employer, for actions of an employee or agent, as provided. Additionally, the bill would create as a defense to a prosecution or civil action pursuant to these provisions that a person has taken good faith actions to restrict or prevent the transmission of, or access to, a specified communication.

(2) Existing law defines the term "matter" for purposes of the provisions governing obscene matter and child pornography.

This bill would expand the definition of the term "matter" to include any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip. Because the bill would incorporate this expanded definition into these criminal provisions, it would change the definitions of various crimes, thereby imposing a state-mandated local program.

(3) The Child Abuse and Neglect Reporting Act requires a commercial film and photographic print processor who has knowledge of or observes a film, photograph, videotape, negative, or slide depicting a child under the age of 14 years engaged in an act of sexual conduct to report the instance of suspected child abuse to a law enforcement agency. A violation of this provision is a misdemeanor.

This bill would require a commercial film and photographic print processor who has knowledge of or observes such a depiction of a child under the age of 16 years engaged in an act of sexual conduct

(i) This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

SEC. 8. Section 312.6 is added to the Penal Code, to read:

312.6. (a) It does not constitute a violation of this chapter for a person or entity solely to provide access or connection to or from a facility, system, or network over which that person or entity has no control, including related capabilities that are incidental to providing access or connection. This subdivision does not apply to an individual or entity that is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing, or knowing distribution of communications that violate this chapter.

(b) An employer is not liable under this chapter for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

(c) It is a defense to prosecution under this chapter and in any civil action that may be instituted based on a violation of this chapter that a person has taken reasonable, effective, and appropriate actions in good faith to restrict or prevent the transmission of, or access to, a communication specified in this chapter.

SEC. 9. Section 312.7 is added to the Penal Code, to read:

312.7. Nothing in this chapter shall be construed to apply to interstate services or to any other activities or actions for which states are prohibited from imposing liability pursuant to Paragraph (4) of subsection (g) of Section 223 of Title 47 of the United States Code.

SEC. 10. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a

person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

Assembly Bill No. 3354

CHAPTER 1081

An act to amend Sections 11165.8, 11166, 11166.5, 11170, and 11172 of, and to add Section 11165.17 to, the Penal Code, relating to child abuse.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3354, Brown. Child abuse and neglect reports.

(1) Existing law, the Child Abuse and Neglect Reporting Act, requires specified individuals, including child care custodians and health practitioners, to report known or suspected instances of child abuse to child protective agencies, except as provided. A violation of this reporting requirement is a misdemeanor.

This bill additionally would require clergy members to report known or suspected instances of child abuse to child protective agencies, as provided. The bill would exempt from its reporting requirement a clergy member who acquires knowledge or reasonable suspicion of child abuse during a penitential communication, as defined, and would make additional conforming changes. This bill would impose a state-mandated local program by expanding the scope of an existing crime and by imposing new duties on public officials of local agencies subject to the reporting requirement under the bill.

(2) Existing law requires that, when a report is made pursuant to specified provisions of the Child Abuse and Neglect Reporting Act, the agency investigating the claim of child abuse shall inform the person required to report under those provisions of the results of the investigation and of any action the agency is taking with regard to the child or family.

This bill additionally would require that, when a report is made pursuant to the provisions requiring members of the clergy to report child abuse under (1) above, the agency investigating the child abuse claim shall inform the person required to report under those provisions of the results of the investigation and of any action the agency is taking with regard to the child or family. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

(3) Existing law provides that specified individuals who report child abuse or, pursuant to a request from a child protective agency, provide the agency with access to the victim of child abuse shall not be subject to civil or criminal liability for those actions.

11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 3.5. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of child abuse to a child protective agency.

(c) (1) Except as provided in paragraph (2) and subdivision (d), any clergy member who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her duties, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child

abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death.

(2) A clergy member who acquires knowledge or reasonable suspicion of child abuse during a penitential communication is not subject to paragraph (1). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(3) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse when he or she is acting in the capacity of a child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, humane society officer, or commercial film print processor.

(d) Any member of the clergy who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way may report the known or suspected instance of child abuse to a child protective agency.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

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

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

The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(i) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section

11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 4. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any person who enters into employment as a child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include all of the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, employee of a child protective agency, or child visitation monitor who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

For purposes of this section, "child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties

imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; social workers, probation officers, or parole officers; employees of a school district police or security department; any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family, and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family, and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family, and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; and paramedics.

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth

recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both, that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 5. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the

Assembly Bill No. 3215

CHAPTER 1090

An act to amend Sections 273a and 273d of, and to add Section 273.1 to, the Penal Code, relating to crimes.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3215, Hawkins. Crimes: child abuse: terms of probation.

Existing law provides that any person who willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured or endangered, is guilty of a crime.

Existing law also provides that any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a crime. If a person is convicted of violating this provision and probation is granted, the court shall require supervised counseling as a condition of probation.

This bill would provide that if a person is convicted of violating either of the above provisions and probation is granted, the court shall require specified minimum conditions of probation, including (1) mandatory minimum periods of probation, (2) criminal court protective orders protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions, (3) successful completion of no less than one year of a child abuser's treatment counseling program to be paid by the defendant if he or she is able, (4) and abstinence from the use of drugs or alcohol and subjection to random drug testing if the offense was committed while the defendant was under the influence of drugs or alcohol. This bill would impose a state-mandated local program by increasing the duties of probation officers.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and

school districts may pursue any available remedies to seek reimbursement for these costs.

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

SECTION 1. Section 273a of the Penal Code is amended to read:

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 2. Section 273d of the Penal Code is amended to read:

Assembly Bill No. 327

CHAPTER 83

An act to amend Section 11165.1 of the Penal Code, relating to crimes.

[Approved by Governor July 21, 1997. Filed with Secretary of State July 21, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 327, Havice. Sexual assault.

Existing law defines "sexual abuse" as sexual assault or sexual exploitation, for purposes of the Child Abuse and Neglect Reporting Act. "Sexual assault" is defined under the act to include several specified sex offenses. Failure to report known or suspected instances of child abuse, including sexual abuse, under the act is a misdemeanor.

This bill would add unlawful sexual intercourse with a child under the age of 16 years when the perpetrator is over the age of 21 years and lewd and lascivious acts with a child of 14 or 15 years of age when the perpetrator is more than 10 years older than the victim to the offenses included in the definition of sexual assault. Because the bill would expand the scope of a crime, the 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 a specified reason.

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

SECTION 1. Section 11165.1 of the Penal Code is amended to read:

11165.1. As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647.6 (child molestation).

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(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

be incurred because 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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Assembly Bill No. 273

CHAPTER 134

An act to amend Sections 273a, 273d, and 1203.097 of the Penal Code, relating to crimes.

[Approved by Governor July 27, 1997. Filed with Secretary of State July 28, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 273, Sweeney. Counseling programs: payment.

Existing law provides that if a person is convicted of child abuse and probation is granted, the court shall require the person to successfully complete a child abuser's treatment counseling program. Existing law also provides that if a person is convicted of domestic violence and probation is granted, the court shall require the person to attend an appropriate counseling program on domestic violence.

This bill would provide that the terms of probation for any of these offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but would not extend the period of probation beyond that period provided for in existing law. The bill also would provide that if the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees. By increasing probation supervision duties, 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 a specified reason.

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

SECTION 1. Section 273a of the Penal Code is amended to read:

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 2. Section 273d of the Penal Code is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars ($6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a) shall receive a four-year enhancement for a prior conviction of that

offense provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 36 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 3. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

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Senate Bill No. 933

CHAPTER 311

An act to amend Sections 56140, 56200, 56205, and 56366 of, to add Sections 49069.5 and 56366.8 to, and to add Chapter 5.5 (commencing with Section 48850) to Part 27 of, the Education Code, to add Sections 7911, 7911.1, and 7912 to the Family Code, to amend Sections 1522, 1522.03, 1522.04, 1522.1, 1522.4, 1534, 1538, 1538.5, 1548, 1550, 1558, 1558.1, 1563, 1568.082, 1568.09, 1568.092, 1568.093, 1569.17, 1569.172, 1569.50, 1569.58, 1569.59, 1569.617, 1596.603, 1596.871, 1596.8713, 1596.877, 1596.885, 1596.8897, and 1596.8898 of, to add Sections 1520.1, 1520.11, 1522.02, 1522.41, 1522.42, 1522.43, 1534.5, 1568.042, 1569.1515, and 1596.952 to, the Health and Safety Code, to amend Section 11174.3 of the Penal Code, and to amend Sections 366, 727.1, 827, 10609.3, 11402, 11461, 11462, 11463, 11465, 16501.1, and 18358.30 of, to add Sections 361.21, 5867.5, 11466.21, 16501.2, and 16516.5 to, to add Chapter 2.5 (commencing with Section 16160) to Part 4 of, and to add Chapter 12.86 (commencing with Section 18987.6) to Part 6 of, Division 9 of, and to repeal Sections 11404.5 and 11467 of, the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 18, 1998. Filed with Secretary of State August 19, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 933, M. Thompson. Foster care.

Existing law provides that each person between the ages of 6 and 18 years, not otherwise exempted, is subject to compulsory full-time education and shall attend the public full-time day school or continuation school for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located. Existing law provides that a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district if the pupil is placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a legal commitment or placement.

This bill would impose a state-mandated local program by requiring every county office of education to make available to agencies that place children in licensed children's institutions information on educational options for children residing in licensed children's institutions within its jurisdiction. The bill would require

director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1598.8897 or any other law.

(e) The department may determine not to exclude a person from, or remove him or her from the position of, a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has been determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances or conditions that either have been corrected or are no longer in existence.

SEC. 50. Section 1596.952 is added to the Health and Safety Code, to read:

1596.952. (a) A corporation that applies for licensure with the department shall list the facilities that any member of the board of directors, the executive director, or an officer that has been licensed to operate, been employed in or served as a member of the board of directors, the executive director, or an officer.

(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1596.851 and 1596.8898.

(c) The department may revoke the license of any corporate licensee that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1596.851 and 1596.8898.

(d) Prior to instituting an administrative action pursuant to subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee. The licensee has 15 days to remove the person from that position if the person does not have client contact, or immediately upon notification if the person has client contact.

SEC. 51. Section 11174.3 of the Penal Code is amended to read:

11174.3. (a) Whenever a representative of a child protective agency or the State Department of Social Services deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each child protective agency, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse, of the requirements of this section.

SEC. 52. Section 361.21 is added to the Welfare and Institutions Code, to read:

361.21. (a) The court shall not order the placement of a minor in an out-of-state group home, unless the court finds, in its order of placement, that both of the following conditions have been met:

(1) The out-of-state group home is licensed or certified for the placement of minors by an agency of the state in which the minor will be placed.

(2) The out-of-state group home meets the requirements of Section 7911.1 of the Family Code.

(b) At least every six months, the court shall review each placement made pursuant to subdivision (a) in order to determine compliance with that subdivision.

the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 77. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make changes in provisions of law relating to children placed in foster care, as well as in provisions relating to facilities licensed by the State Department of Social Services, at the earliest possible time, it is necessary that this act go into immediate effect.

O

PEACE OFFICERS—PUBLIC SAFETY—PEACE OFFICER STANDARDS AND TRAINING

CHAPTER 287

S.B. No. 1955

AN ACT to amend Section 1560 of the Evidence Code, to amend Sections 190.9, 209, 266c, 273.5, 289.6, 290, 347, 600, 667.71, 832.6, 976.5, 9991, 1170.11, 1170.17, 1174.4, 1240.1, 2933.5, 3046, 11160, 11165.1, 12020, 12022.53, and 12280 of the Penal Code, and to amend Sections 21221.5 and 23612 of the Vehicle Code, and to amend Sections 727.4 and 15610.63 of, and to amend and renumber Section 727.2 of, the Welfare and Institutions Code, relating to public safety.

[Filed with Secretary of State September 1, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1955, Committee on Public Safety. Public safety.

(1) Existing law deems satisfied the training requirements of a reserve officer who has previously satisfied the training requirements of the Commission on Peace Officer Standards and Training and has been serving as a level I or II reserve officer in a law enforcement agency, even if that reserve officer accepts a new appointment at the same level in another law enforcement agency.

This bill would require a reserve officer to satisfy current training requirements if there has been more than a 3-year break in service. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Existing law authorizes the prosecution and punishment of a person under the age of 18 years as an adult for a criminal offense under specified circumstances upon a finding that the person is not a fit and proper subject to be dealt with under the juvenile court law. Existing statutory language provides that, except as otherwise provided, a person prosecuted under this provision must be sentenced under the juvenile court law unless the district attorney demonstrates by a preponderance of the evidence, that the person is a fit and proper subject to be dealt with under the juvenile court law based upon 5 specified circumstances.

This bill would amend that provision to correct that statutory language by providing that, except as otherwise provided, a person prosecuted under this provision must be sentenced under the juvenile court law unless the district attorney demonstrates by a preponderance of the evidence, that the person is not a fit and proper subject to be dealt with under the juvenile court law as specified.

(3) Existing law provides that when an accusatory pleading is filed in Sierra County, and the defendant is in the custody of Nevada County, the defendant may be arraigned in Nevada County. Existing law also provides for repeal of these provisions on January 1, 2001.

This bill would instead provide that these provisions would be repealed on January 1, 2005.

(4) Existing law specifies that a person who drives a motor vehicle is deemed to have given his or her consent to a chemical test of his or her blood or breath for the purpose of determining the alcoholic content of the blood if lawfully arrested for violating a specified provision of law.

This bill would correct a cross-reference in this provision.

(5) Existing law provides that the court in any noncapital criminal, juvenile court, or civil commitment case shall assign a court reporter who uses computer aided transcription equipment to report all proceedings, as specified.

This bill would delete this assignment requirement imposed upon a court in a noncapital criminal, juvenile court, or civil commitment case and place the requirement instead on the municipal and superior courts in which proceedings are conducted in any case in which a death sentence may be imposed.

apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

SEC. 21. Section 11165.1 of the Penal Code is amended to read:

11165.1. As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration * * *), or 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

SEC. 22. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst

CRIMES—PREVENTION—REPORTING CHILD ABUSE

CHAPTER 916

A.B. No. 1241

AN ACT to amend Sections 11164, 11165.5, 11165.7, 11165.12, 11165.13, 11165.14, 11166, 11166.1, 11166.2, 11166.3, 11166.5, 11166.7, 11166.8, 11166.9, 11167, 11167.5, 11168, 11169, 11170, 11171, 11171.5, 11172, 11174.1, and 11174.3 of, and to repeal Sections 11165.8, 11165.10, 11165.15, 11165.16, and 11165.17 of, and to repeal and add Sections 11165.6 and 11165.9 of, the Penal Code, relating to child abuse reporting.

[Filed with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1241, Rod Pacheco. Crime prevention: child abuse reporting.

(1) Existing law establishes the Child Abuse and Neglect Reporting Act (CANRA), which requires specified persons who have knowledge of or observe a child in their professional capacity or within the scope of their employment, whom the person knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency, as defined. While the definition of child abuse includes specified forms of child abuse and neglect, the provisions of CANRA refer only to child abuse.

This bill would reorganize and recast the list of specified persons who are required to report as described above and designate those persons as mandated reporters, as defined. The bill would also reorganize other provisions of CANRA that reference those persons required to report, as specified. In addition, the bill would amend the provisions of CANRA to apply to child abuse and neglect.

(2) Existing law under CANRA defines "child abuse" to mean specified forms of abuse and neglect including a physical injury that is inflicted by other than accidental means on a child by another person.

This bill would recast the terms "child abuse" and "child abuse or neglect."

(3) Existing law under CANRA defines a child protective agency as a police or sheriff's department, a county probation department, or a county welfare department, and requires that reports of suspected child abuse or neglect be made to those agencies.

This bill would delete the term "child protective agency" from the definitional and functional provisions of the act and would specify the designated agencies authorized to receive reports of child abuse and neglect. The bill would also require any of those agencies to accept a report of suspected child abuse or neglect whether made by a mandated reporter or another person, or a referral from another agency, even if the agency to whom the report is made lacks jurisdiction to investigate the case, unless that agency immediately transfers the call to the appropriate agency as specified. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(4) Existing law under CANRA imposes mandatory child abuse reporting duties on firefighters, animal control officers, and humane society officers, but exempts those individuals from those reporting requirements if that individual has not received specified training in the identification and reporting of child abuse.

This bill would delete that exemption.

(5) Existing law under CANRA requires any person in a specified category designated as a mandated reporter, who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, to report the known or suspected instance of child abuse to a child protective agency as specified. The CANRA specifies that the pregnancy of a minor does not, in and of itself, constitu[470]basis of reasonable suspicion of abuse. The

CANRA also authorizes the specified mandated reporters to report a known or suspected instance of child abuse to a child protective agency when he or she has knowledge of or reasonably suspects that mental suffering has been inflicted on a child or that the child's emotional well-being is endangered.

This bill would recast these provisions by requiring that a mandated reporter make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom that reporter knows or reasonably suspects has been the victim of child abuse or neglect.

(6) Existing law under CANRA requires that a telephone report of a known or suspected instance of child abuse include specified information regarding the caller, the child, and the abuse.

This bill would recast this provision and specify additional information to be included in the report while requiring the report to be made, even if the information is incomplete.

(7) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 11164 of the Penal Code is amended to read:

11164. (a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

SEC. 2. Section 11165.5 of the Penal Code is amended to read:

11165.5. As used in this article, the term "abuse or neglect in out-of-home care" * * * includes sexual abuse * * * as defined in Section 11165.1, neglect * * * as defined in Section 11165.2, * * * unlawful corporal punishment or injury as defined in Section 11165.4, or the willful cruelty or unjustifiable punishment of a child, as defined in * * * Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 3. Section 11165.6 of the Penal Code is repealed.

SEC. 4. Section 11165.6 is added to the Penal Code, to read:

11165.6. As used in this article, "child abuse" means a physical injury that is inflicted by other than accidental means on a child by another person. The term "child abuse or neglect" includes sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, unlawful corporal punishment or injury as defined in Section 11165.4, and abuse or neglect in out-of-home care as defined in Section 11165.5. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 5. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, * * * "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

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

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

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

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

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

(11) A headstart teacher.

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

(13) A public assistance worker.

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

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

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

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

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

(20) A firefighter, except for voluntary firefighters.

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

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

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

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

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

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

(27) A coroner.

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

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

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

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

SEC. 6. Section 11165.8 of the Penal Code is repealed.

SEC. 7. Section 11165.9 of the Penal Code is repealed.

SEC. 8. Section 11165.9 is added to the Penal Code, to read:

11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

SEC. 9. Section 11165.10 of the Penal Code is repealed.

SEC. 10. Section 11165.12 of the Penal Code is amended to read:

11165.12. As used in this article, the following definitions shall control:

(a) "Unfounded report" means a report which is determined by * * * the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) "Substantiated report" means a report which is determined by * * * the investigator who conducted the investigation, based upon some credible evidence, to constitute child abuse or neglect, as defined in Section 11165.6.

(c) "Inconclusive report" means a report which is determined by * * * the investigator who conducted the investigation not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

SEC. 11. Section 11165.13 of the Penal Code is amended to read:

11165.13. For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare * * * or probation department, and not to a law enforcement agency.

SEC. 12. Section 11165.14 of the Penal Code is amended to read:

11165.14. The appropriate local * * * law enforcement agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or * * * an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

SEC. 13. Section 11165.15 of the Penal Code is repealed.

SEC. 14. Section 11165.16 of the Penal Code is repealed.

SEC. 15. Section 11165.17 of the Penal Code is repealed.

SEC. 16. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision * * * (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report * * * to * * * the agency immediately or as soon as * * * is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident* * *.

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

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

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

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

* * * (c)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to * * * subdivision (a).

For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

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

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

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

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

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

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

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

(h) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronically transmit to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written

report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. For the purposes of this subdivision, a fax or electronic transmission shall be deemed to be a written report.

(i) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 17. Section 11166.1 of the Penal Code is amended to read:

11166.1. (a) When * * * an agency receives a report pursuant to Section 11166 that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

(1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The * * * agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of * * * an agency specified in Section 11165.9 who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the * * * report prepared * * * in accordance with Section 11166* * *. The * * * agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the * * * agency within 30 days of the request.

SEC. 18. Section 11166.2 of the Penal Code is amended to read:

11166.2. In addition to the reports required under Section 11166, * * * any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. * * * The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

SEC. 19. Section 11166.3 of the Penal Code is amended to read:

11166.3. (a) The Legislature intends that in each county the law enforcement agencies and the county welfare or * * * probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or

probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department * * * or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, * * * evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or * * * probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859* * *.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of Section 1502 or in Section 1596.750 or 1596.76 of the Health and Safety Code and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

SEC. 20. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, * * * any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall * * * inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166.

* * *

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by * * * public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person

during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 21. Section 11166.7 of the Penal Code is amended to read:

11166.7. (a) Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.

(c) In developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Pediatricians with expertise in child abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys.

(6) Child protective services staff.

(7) Law enforcement personnel.

(8) Representatives of local agencies which are involved with child abuse or neglect reporting.

(9) County health department staff who deals with children's health issues.

(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

SEC. 22. Section 11166.8 of the Penal Code is amended to read:

11166.8. Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases so that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

SEC. 23. Section 11166.9 of the Penal Code is amended to read:

11166.9. (a)(1) The purpose of this section shall be to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths.

(2) It is the intent of the Legislature that the California State Child Death Review Council, the Department of Justice, the State Department of Social Services, the State Department of Health Services, and state and local child death review teams shall share data and other information necessary from the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics and the Department of Social Services Child Welfare Services/Case Management System files to establish accurate information on the nature and extent of child abuse or neglect related

fatalities in California as those documents relate to child fatality cases. Further, it is the intent of the Legislature to ensure that records of child abuse or neglect related fatalities are entered into the State Department of Social Services, Child Welfare Services/Case Management System. It is also the intent that training and technical assistance be provided to child death review teams and professionals in the child protection system regarding multiagency case review.

(b)(1) It shall be the duty of the California State Child Death Review Council to oversee the statewide coordination and integration of state and local efforts to address fatal child abuse or neglect and to create a body of information to prevent child deaths. The Department of Justice, the State Department of Social Services, the State Department of Health Services, the California Coroner's Association, the County Welfare Directors Association, Prevent Child Abuse California, the California Homicide Investigators Association, the Office of Criminal Justice Planning, the Inter-Agency Council on Child Abuse and Neglect/National Center on Child Fatality Review, the California Conference of Local Health Officers, the California Conference of Local Directors of Maternal, Child, and Adolescent Health, the California Conference of Local Health Department Nursing Directors, the California District Attorneys Association, and at least three regional representatives, chosen by the other members of the council, working collaboratively for the purposes of this section, shall be known as the California State Child Death Review Council. The council shall select a chairperson or cochairpersons from the members.

(2) The Department of Justice is hereby authorized to carry out the purposes of this section by coordinating council activities and working collaboratively with the agencies and organizations in paragraph (1), and may consult with other representatives of other agencies and private organizations, to help accomplish the purpose of this section.

(c) Meetings of the agencies and organizations involved shall be convened by a representative of the Department of Justice. All meetings convened between the Department of Justice and any organizations required to carry out the purpose of this section shall take place in this state. There shall be a minimum of four meetings per calendar year.

(d) To accomplish the purpose of this section, the Department of Justice and agencies and organizations involved shall engage in the following activities:

(1) Analyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to public officials in the state who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year.

The state data shall include the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics, and the State Department of Social Services Child Welfare Services/Case Management System.

(2) In conjunction with the Office of Criminal Justice Planning, coordinate statewide and local training for county death review teams and the members of the teams, including, but not limited to, training in the application of the interagency child death investigation protocols and procedures established under Sections 11166.7 and 11166.8 to identify child deaths associated with abuse.

(e) The State Department of Health Services, in collaboration with the California State Child Death Review Council, shall design, test and implement a statewide child abuse or neglect fatality tracking system incorporating information collected by local child death review teams. The department shall:

(1) Establish a minimum case selection criteria and review protocols of local child death review teams.

(2) Develop a standard child death review form with a minimum core set of data elements to be used by local child death review teams, and collect and analyze that data.

(3) Establish procedural safeguards in order to maintain appropriate confidentiality and integrity of the data.

(4) Conduct annual reviews to reconcile data reported to the State Department of Health Services Vital Statistics, Department of Justice Homicide Files and Child Abuse Central Index, and the State Department of Social Services Child Welfare Services/Case Management System data systems, with data provided from local child death review teams.

(5) Provide technical assistance to local child death review teams in implementing and maintaining the tracking system.

(6) This subdivision shall become operative on July 1, 2000, and shall be implemented only to the extent that funds are appropriated for its purposes in the Budget Act.

(f) Local child death review teams shall participate in a statewide child abuse or neglect fatalities monitoring system by:

(1) Meeting the minimum standard protocols set forth by the State Department of Health Services in collaboration with the California State Child Death Review Council.

(2) Using the standard data form to submit information on child abuse or neglect fatalities in a timely manner established by the State Department of Health Services.

(g) The California State Child Death Review Council shall monitor the implementation of the monitoring system and incorporate the results and findings of the system and review into an annual report.

(h) The Department of Justice shall direct the creation, maintenance, updating, and distribution electronically and by paper, of a statewide child death review team directory, which shall contain the names of the members of the agencies and private organizations participating under this section, and the members of local child death review teams and local liaisons to those teams. The department shall work in collaboration with members of the California State Child Death Review Council to develop a directory of professional experts, resources, and information from relevant agencies and organizations and local child death review teams, and to facilitate regional working relationships among teams. The Department of Justice shall maintain and update these directories annually.

(i) The agencies or private organizations participating under this section shall participate without reimbursement from the state. Costs incurred by participants for travel or per diem shall be borne by the participant agency or organization. The participants shall be responsible for collecting and compiling information to be included in the annual report. The Department of Justice shall be responsible for printing and distributing the annual report using available funds and existing resources.

(j) The Office of Criminal Justice Planning, in coordination with the State Department of Social Services, the Department of Justice, and the California State Child Death Review Council shall contract with state or nationally recognized organizations in the area of child death review to conduct statewide training and technical assistance for local child death review teams and relevant organizations, develop standardized definitions for fatal child abuse or neglect, develop protocols for the investigation of fatal child abuse, and address relevant issues such as grief and mourning, data collection, training for medical personnel in the identification of child abuse fatalities, domestic violence fatality review, and other related topics and programs. The provisions of this subdivision shall only be implemented to the extent that the Office of Criminal Justice Planning can absorb the costs of implementation within its current funding, or to the extent that funds are appropriated for its purposes in the Budget Act.

(k) Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings.

(l) County child welfare agencies shall create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect, whether or not the deceased child has any known surviving siblings. Upon notification that the death was determined not to be related to child abuse or neglect, the child welfare agency shall enter that information into the Child Welfare Services/Case Management System.

SEC. 24. Section 11167 of the Penal Code is amended to read:

11167. (a) * * * Reports of * * * suspected child abuse or neglect pursuant to Section 11166 shall include, if known, the name, business address, and telephone number of the mandated reporter, and the capacity that makes the person a mandated reporter; the child's name and address, present location, and, where applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect may also be given to an investigator from * * * an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse * * * or neglect.

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

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

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

SEC. 25. Section 11167.5 of the Penal Code is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.

(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from * * * an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to subdivision (c) of Section 11170. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim in order to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of both (1) a specific out-of-state statute or interstate compact provision that requires that the information contained within these reports be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and (2) criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(13) Persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided by subdivision (e) of Section 11170. Disclosure under this section shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Nothing in this section prohibits a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim to maintain confidentiality as required by law.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in Section 11165.8, pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any

other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

SEC. 26. Section 11168 of the Penal Code is amended to read:

11168. The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be * * * distributed by the agencies specified in Section 11165.9.

SEC. 27. Section 11169 of the Penal Code is amended to read:

11169. (a) * * * An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or neglect which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. * * * An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. * * * An agency specified in Section 11165.9 receiving a written report from another * * * agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) At the time * * * an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(c) * * * Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes * * * an agency from retaining the reports for a longer period of time if required by law.

(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by * * * an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

SEC. 28. Section 11170 of the Penal Code is amended to read:

11170. (a)(1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b)(1) The Department of Justice shall immediately notify * * * an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. * * * The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(4) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(5) The department shall make available to * * * investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the * * * agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(6)(A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or * * * an agency or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

(B) If Child Abuse Central Index information is requested by * * * an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if

compliance would cause a delay in providing an expedited response to the * * * agency's inquiry and if further delay in placement may be detrimental to the child.

(7)(A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any * * * agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the * * * agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by * * * an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to Section 11169 to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial

entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(e) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (a) of Section 11167.5.

(f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 29. Section 11171 of the Penal Code is amended to read:

11171. (a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.

(b) Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

SEC. 30. Section 11171.5 of the Penal Code is amended to read:

11171.5. (a) If a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent.

Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.

(b) With respect to the cost of an X-ray taken by the county coroner or at the request of the county coroner in suspected child abuse or neglect cases, the county may charge the parent or legal guardian of the child-victim the costs incurred by the county for the X-ray.

(c) No person who administers an X-ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the X-ray.

SEC. 31. Section 11172 of the Penal Code is amended to read:

11172. (a) * * * No mandated reporter who reports a known or suspected instance of child abuse or neglect shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any * * * person, who, * * * pursuant to a request from a * * * government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse or neglect, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse or neglect. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a * * * mandated reporter may present a claim to the State Board of Control for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

* * *

SEC. 32. Section 11174.1 of the Penal Code is amended to read:

11174.1. (a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined in Section 11165.6, in facilities licensed to care for children, and shall insure that the investigation is conducted in accordance with the regulations and guidelines.

(b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:

(1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.

(2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse or neglect, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.

(c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse or neglect, as defined in Section 11165.6.

SEC. 33. Section 11174.3 of the Penal Code is amended to read:

11174.3. (a) Whenever a representative of a * * * government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the * * * agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to support the child and enable him or her to be as comfortable as possible. However, the member of the staff so selected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each * * * agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

SEC. 34. This act is not intended to abrogate the case of Alejo v. City of Alhambra (1999) 75 Cal.App.4th 1180.

SEC. 35. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

LABOR—FARM LABOR CONTRACTORS—LICENSING SPECIFICATIONS

CHAPTER 917

A.B. No. 1338

AN ACT to amend Sections 1684, 1684.5, 1687, 1698, and 1698.1 of, and to add Sections 1682.8 and 1695.55 to, the Labor Code, relating to farm labor contractors.

[Filed with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1338, Reyes. Farm labor contractors: licenses.

Existing law prescribes various fines and penalties for farm labor contractors who violate provisions of the law applicable to farm labor contractors.

This bill would authorize the Labor Commissioner to establish and maintain a Farm Labor Contractor Special Enforcement Unit, as specified, to enforce provisions of law relating to farm workers, as provided.

Existing law requires farm labor contractors to deposit a surety bond in the sum of $10,000, as a condition to obtain a license from the Labor Commissioner. The contractor is permitted to give a deposit in lieu of a bond.

This bill would require a farm labor contractor to deposit a surety bond in specified amounts based on the size of the person's payroll, as provided. Farm labor contractors would no longer be permitted to give a deposit instead of a bond.

Existing law requires farm labor contractors to pay a $350 annual license fee.

This bill would increase the licensing fee to $500.

Existing law provides that $25 of the annual licensing fee be deposited into a separate account, funds from which are to be disbursed by the Labor Commissioner to persons damaged by licensees.

assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.

(e) For the purposes of this article, "general obligation bonds," as that term is used in Section 18 of Article XVI of the California Constitution, means bonds of a school district or community college district the repayment of which is provided for by this chapter and Chapter 1 (commencing with Section 15100) of Part 10, and includes bonds of a school facilities improvement district the repayment of which is provided for by this chapter and Chapter 2 (commencing with Section 15300).

SEC. 3. Section 15271 is added to the Education Code, to read:

15271. The governing board of a school district or community college district may proceed pursuant to this chapter on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district and act on behalf of the school facilities district as provided pursuant to Chapter 2 (commencing with Section 15300).

SEC. 4. Section 15340 of the Education Code is amended to read:

15340. (a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district to, or may at the next statewide election, submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefor in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed. Notwithstanding any other provision of law, any special election called pursuant to this section may be called for any date except as set forth in Section 1100 of the Elections Code, and except as provided in subdivision (a) of Section 15266 for bonds authorized and issued under the authority of subdivision (b) of Section 15348 and Chapter 1.5 (commencing with Section 15264).

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district.

SEC. 5. Section 15348 of the Education Code is amended to read:

15348. (a) The proposition shall be deemed approved upon approval by two-thirds of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district unless subdivision (b) is applicable.

(b) Alternatively, for a governing board of a school district or community college district that proceeds pursuant to Chapter 1.5 (commencing with Section 15264) and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district, as specified in Section 15359.3, the proposition shall be deemed approved upon approval by 55 percent of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district.

SEC. 6. Section 15359.3 is added to the Education Code, to read:

15359.3. The governing board of a school district or community college district may proceed pursuant to Chapter 1.5 (commencing with Section 15264) and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district under this chapter.

CRIMES AND OFFENSES—CHILD ABUSE—MANDATED REPORTER

CHAPTER 133

A.B. No. 102

AN ACT to amend Sections 11165.5, 11165.6, 11165.7, 11165.9, 11166, 11166. 2, 11166.3, 11166.5, 11166.7, 11166.9, 11166.95, 11167, 11169, 11170, and 11172 of, and to add Section 11166.05 to, the Penal Code, relating to crime reporting and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State July 31, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 102, Rod Pacheco. Child abuse reporting: endangerment of child's emotional well-being.

Existing law establishes that the Child Abuse and Neglect Reporting Act (CANRA), which requires specified persons who have knowledge of or observe a child in their professional capacity or within the scope of their employment, whom the person knows or reasonably suspects has been the victim of child abuse or neglect to report that known or suspected instance of child abuse or neglect to a child protective agency, as defined. Child protective agencies are then required to forward a written report of every child abuse or neglect case it investigates, which is determined not to be unfounded, to the Department of Justice.

This bill would provide, in addition, that any mandated reporter who has knowledge of or reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way may make a report to a child protective agency. This bill would require child protective agencies to forward reports of child abuse or severe neglect to the Department of Justice. The bill would also specify that abuse or neglect in out-of-home care means physical abuse, including particular acts, and would make technical, nonsubstantive, or conforming changes to CANRA.

This bill would declare that it would take effect immediately as an urgency statute.

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

SECTION 1. Section 11165.5 of the Penal Code is amended to read:

11165.5. As used in this article, the term "abuse or neglect in out-of-home care" includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful cruelty or unjustifiable punishment of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 2. Section 11165.6 of the Penal Code is amended to read:

11165.6. As used in this article, the term "child abuse * * * or neglect" includes physical injury * * * inflicted by other than accidental means upon a child by another person * * *, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4 * * *. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 3. Section 11165.7 of the Penal Code is amended to read:

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

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

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

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

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

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

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

(11) A headstart teacher.

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

(13) A public assistance worker.

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

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

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

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

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

(20) A firefighter, except for volunteer firefighters.

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

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

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

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

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

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

(27) A coroner.

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

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

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

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this icle, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar ctionary of a church, temple, or recognized denomination or organization.

33) Any employee of any police department, county sheriff's department, county probation partment, or county welfare department.

b) Volunteers of public or private organizations whose duties require direct contact and pervision of children are encouraged to obtain training in the identification and reporting of ld abuse.

c) Training in the duties imposed by this article shall include training in child abuse ntification and training in child abuse reporting. As part of that training, school districts all provide to all employees being trained a written copy of the reporting requirements and written disclosure of the employees' confidentiality rights.

d) School districts that do not train their employees specified in subdivision (a) in the ties of * * * mandated reporters under the child abuse reporting laws shall report to the ate Department of Education the reasons why this training is not provided.

e) The absence of training shall not excuse a mandated reporter from the duties imposed this article.

SEC. 4. Section 11165.9 of the Penal Code is amended to read:

11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters any police department * * * or sheriff's department, not including a school district police security department, county probation department, if designated by the county to receive andated reports, or the county welfare department. * * * Any of those agencies shall cept a report of suspected child abuse or neglect whether offered by a mandated reporter another person, or referred by another agency, even if the agency to whom the report is ing made lacks subject matter or geographical jurisdiction to investigate the reported case, less the agency can immediately electronically transfer the call to an agency with proper risdiction. When an agency takes a report about a case of suspected child abuse or neglect which that agency lacks jurisdiction, the agency shall immediately refer the case by lephone, fax, or electronic transmission to an agency with proper jurisdiction.

SEC. 5. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (c), a mandated reporter shall make a report an agency specified in Section 11165.9 whenever the mandated reporter, in his or her ofessional capacity or within the scope of his or her employment, has knowledge of or serves a child whom the mandated reporter knows or reasonably suspects has been the ctim of child abuse or neglect. The mandated reporter shall make a report to the agency mediately or as soon as is practicably possible by telephone, and the mandated reporter all prepare and send a written report thereof within 36 hours of receiving the information ncerning the incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively asonable for a person to entertain a suspicion, based upon facts that could cause a asonable person in a like position, drawing, when appropriate, on his or her training and perience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual buse.

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

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

(b) Any mandated reporter who fails to report an incident of known or reasonably uspected child abuse or neglect as required by this section is guilty of a misdemeanor unishable by up to six months confinement in a county jail or by a fine of one thousand ollars ($1,000) or by both that fine and punishment.

(c)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or [illegible] subject to subdivision (a). For the

purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

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

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

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

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

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

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

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

(h) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or * * * electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written

report thereof within 36 hours of receiving the information concerning the incident to any agency to which it * * * makes a telephone report under this subdivision* * *.

(i) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it * * * makes a telephone report under this subdivision.

SEC. 6. Section 11166.05 is added to the Penal Code, to read:

11166.05. Any mandated reporter who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

SEC. 7. Section 11166.2 of the Penal Code is amended to read:

11166.2. In addition to the reports required under Section 11166, any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone, fax, or electronic transmission to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it * * * makes a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

SEC. 8. Section 11166.3 of the Penal Code is amended to read:

11166.3. (a) The Legislature intends that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of subdivision (a) of Section 1502 * * *, Section 1596.750 or 1596.76 of the Health and Safety Code, and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

SEC. 9. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in * * * paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

* * *

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in * * * paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 10. Section 11166.7 of the Penal Code is amended to read:

11166.7. (a) Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was

not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.

(c) In developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Pediatricians with expertise in child abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys.

(6) Child protective services staff.

(7) Law enforcement personnel.

(8) Representatives of local agencies which are involved with child abuse or neglect reporting.

(9) County health department staff who deals with children's health issues.

(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

SEC. 11. Section 11166.9 of the Penal Code is amended to read:

11166.9. (a)(1) The purpose of this section shall be to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths.

(2) It is the intent of the Legislature that the California State Child Death Review Council, the Department of Justice, the State Department of Social Services, the State Department of Health Services, and state and local child death review teams shall share data and other information necessary from the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics and the Department of Social Services Child Welfare Services/Case Management System files to establish accurate information on the nature and extent of child abuse or neglect related fatalities in California as those documents relate to child fatality cases. Further, it is the intent of the Legislature to ensure that records of child abuse or neglect related fatalities are entered into the State Department of Social Services, Child Welfare Services/Case Management System. It is also the intent that training and technical assistance be provided to child death review teams and professionals in the child protection system regarding multiagency case review.

(b)(1) It shall be the duty of the California State Child Death Review Council to oversee the statewide coordination and integration of state and local efforts to address fatal child abuse or neglect and to create a body of information to prevent child deaths. The Department of Justice, the State Department of Social Services, the State Department of Health Services, the California Coroner's Association, the County Welfare Directors Association, Prevent Child Abuse California, the California Homicide Investigators Association, the Office of Criminal Justice Planning, the Inter-Agency Council on Child Abuse and Neglect/National Center on Child Fatality Review, the California Conference of Local Health Officers, the California Conference of Local Directors of Maternal, Child, and Adolescent Health, the California Conference of Local Health Department Nursing Directors, the California District Attorneys Association, and at least three regional representatives, chosen by the other members of the council, working collaboratively for the purposes of this section, shall be known as the California State Child Death Review Council. The council shall select a chairperson or cochairpersons from the members.

(2) The Department of Justice is hereby authorized to carry out the purposes of this section by coordinating council activities and working collaboratively with the agencies and organizations in paragraph (1), and may consult with other representatives of other agencies and private organizations, to help accomplish the purpose of this section.

(c) Meetings of the agencies and organizations involved shall be convened by a representative of the Department of Justice. All meetings convened between the Department of Justice

and any organizations required to carry out the purpose of this section shall take place in this state. There shall be a minimum of four meetings per calendar year.

(d) To accomplish the purpose of this section, the Department of Justice and agencies and organizations involved shall engage in the following activities:

(1) Analyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to public officials in the state who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year.

The state data shall include the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics, and the State Department of Social Services Child Welfare Services/Case Management System.

(2) In conjunction with the Office of Criminal Justice Planning, coordinate statewide and local training for county death review teams and the members of the teams, including, but not limited to, training in the application of the interagency child death investigation protocols and procedures established under Sections 11166.7 and 11166.8 to identify child deaths associated with abuse or neglect.

(e) The State Department of Health Services, in collaboration with the California State Child Death Review Council, shall design, test and implement a statewide child abuse or neglect fatality tracking system incorporating information collected by local child death review teams. The department shall:

(1) Establish a minimum case selection criteria and review protocols of local child death review teams.

(2) Develop a standard child death review form with a minimum core set of data elements to be used by local child death review teams, and collect and analyze that data.

(3) Establish procedural safeguards in order to maintain appropriate confidentiality and integrity of the data.

(4) Conduct annual reviews to reconcile data reported to the State Department of Health Services Vital Statistics, Department of Justice Homicide Files and Child Abuse Central Index, and the State Department of Social Services Child Welfare Services/Case Management System data systems, with data provided from local child death review teams.

(5) Provide technical assistance to local child death review teams in implementing and maintaining the tracking system.

(6) This subdivision shall become operative on July 1, 2000, and shall be implemented only to the extent that funds are appropriated for its purposes in the Budget Act.

(f) Local child death review teams shall participate in a statewide child abuse or neglect fatalities monitoring system by:

(1) Meeting the minimum standard protocols set forth by the State Department of Health Services in collaboration with the California State Child Death Review Council.

(2) Using the standard data form to submit information on child abuse or neglect fatalities in a timely manner established by the State Department of Health Services.

(g) The California State Child Death Review Council shall monitor the implementation of the monitoring system and incorporate the results and findings of the system and review into an annual report.

(h) The Department of Justice shall direct the creation, maintenance, updating, and distribution electronically and by paper, of a statewide child death review team directory, which shall contain the names of the members of the agencies and private organizations participating under this section, and the members of local child death review teams and local liaisons to those teams. The department shall work in collaboration with members of the California State Child Death Review Council to develop a directory of professional experts, resources, and information from relevant agencies and organizations and local child death

review teams, and to facilitate regional working relationships among teams. The Department of Justice shall maintain and update these directories annually.

(i) The agencies or private organizations participating under this section shall participate without reimbursement from the state. Costs incurred by participants for travel or per diem shall be borne by the participant agency or organization. The participants shall be responsible for collecting and compiling information to be included in the annual report. The Department of Justice shall be responsible for printing and distributing the annual report using available funds and existing resources.

(j) The Office of Criminal Justice Planning, in coordination with the State Department of Social Services, the Department of Justice, and the California State Child Death Review Council shall contract with state or nationally recognized organizations in the area of child death review to conduct statewide training and technical assistance for local child death review teams and relevant organizations, develop standardized definitions for fatal child abuse or neglect, develop protocols for the investigation of fatal child abuse or neglect, and address relevant issues such as grief and mourning; data collection, training for medical personnel in the identification of child abuse or neglect fatalities, domestic violence fatality review, and other related topics and programs. The provisions of this subdivision shall only be implemented to the extent that the Office of Criminal Justice Planning can absorb the costs of implementation within its current funding, or to the extent that funds are appropriated for its purposes in the Budget Act.

(k) Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings.

(l) County child welfare agencies shall create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect, whether or not the deceased child has any known surviving siblings. Upon notification that the death was determined not to be related to child abuse or neglect, the child welfare agency shall enter that information into the Child Welfare Services/Case Management System.

SEC. 12. Section 11166.95 of the Penal Code is amended to read:

11166.95. The State Department of Social Services shall work with state and local child death review teams and child protective services agencies in order to identify child death cases that were, or should have been, reported to or by county child protective services agencies. Findings made pursuant to this section shall be used to determine the extent of child abuse or neglect fatalities occurring in families known to child protective services agencies and to define child welfare training needs for reporting, cross-reporting, data integration, and involvement by child protective services agencies in multiagency review in child deaths. The State Department of Social Services, the State Department of Health Services, and the Department of Justice shall develop a plan to track and maintain data on child deaths from abuse or neglect, and submit this plan, not later than December 1, 1997, to the Senate Committee on Health and Human Services, the Assembly Committee on Human Services, and the chairs of the fiscal committees of the Legislature.

SEC. 13. Section 11167 of the Penal Code is amended to read:

11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 shall include, if known, the name, business address, and telephone number of the mandated reporter, and the capacity that makes the person a mandated reporter; the child's name and address, present location, and, where applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect may * * * be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

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

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

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

SEC. 14. Section 11169 of the Penal Code is amended to read:

11169. (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

SEC. 15. Section 11170 of the Penal Code is amended to read:

11170. (a)(1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b)(1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(4) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(5) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(6)(A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or an agency or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its

sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(7)(A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL–DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to Section 11169 to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that

requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(e) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (b) of Section 11167.5.

(f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 16. Section 11172 of the Penal Code is amended to read:

11172. (a) No mandated reporter * * * shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required * * * or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required * * * or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the State Board of Control for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to continue to protect children by providing for the reporting of child abuse or neglect that endangers a child's emotional well-being, it is necessary for this act to take effect immediately.

LABOR AND EMPLOYMENT—COMPLAINT—TIME LIMIT

CHAPTER 134

A.B. No. 1069

AN ACT to amend Section 98.7 of the Labor Code, relating to employment.

[Filed with Secretary of State July 31, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1069, Koretz. Labor: complaints.

Existing law provides that any person who believes that he or she has been discharged or otherwise discriminated against in violation of specified laws regulating employment that are under the jurisdiction of the Labor Commissioner, may file a complaint with the Division of Labor Standards Enforcement.

This bill would expand that provision to cover any law under the jurisdiction of the Labor Commissioner.

Existing law provides that if, after an investigation, the Labor Commissioner determines that no violation to a law has occurred, the Labor Commissioner shall dismiss the complaint and notify the complainant of his or her right to bring an action in an appropriate court, and, in the case of an alleged violation of specified discrimination laws, file a complaint against the state program with the United States Department of Labor.

This bill would provide that the filing of a timely complaint with the United States Department of Labor stays the Labor Commissioner's dismissal of the division complaint until the United States Secretary of Labor makes a determination regarding the alleged violation. Under the bill, within 15 days of receipt of that determination, the Labor Commissioner is required to notify the parties as to whether he or she will reopen the complaint filed with the division or whether he or she will reaffirm the dismissal.

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

SECTION 1. Section 98.7 of the Labor Code is amended to read:

98.7. (a) Any person who believes that he or she has been discharged or otherwise discriminated against in violation of any * * * law under the jurisdiction of the Labor Commissioner may file a complaint with the division within six months after the occurrence of the violation. The six-month period may be extended for good cause. The complaint shall be investigated by a discrimination complaint investigator in accordance with this section. The Labor Commissioner shall establish procedures for the investigation of discrimination complaints. A summary of the procedures shall be provided to each complainant and respondent at the time of initial contact. The Labor Commissioner shall inform complainants charging a violation of Section 6310 or 6311, at the time of initial contact, of his or her right to file a

(commencing with Section 8780), and Article 10 (commencing with Section 8830) of Chapter 3 of Part 3 of Division 6.

(3) Article 1 (commencing with Section 9000) of Chapter 4 of Part 3 of Division 6.

(e) A master's license shall not be revoked unless both the first and second convictions are for a violation by the master or a violation occurring when the person convicted was acting as the master's agent, servant, employee, or acting under the master's direction or control.

(f) The master of a vessel is the person on board the vessel who is in charge of the vessel.

SEC. 26. Section 12006.6 of the Fish and Game Code is amended to read:

12006.6. Notwithstanding Section 12000 or 12002.8, and in addition to Section 12009, and notwithstanding the type of fishing license or permit held, if any person is convicted of a violation of Section 5521 or 5521.5, and the offense occurs in an area closed to the taking of abalone for commercial purposes, and the person takes or possesses more than 12 abalone at one time or * * * takes abalone * * * in excess of the annual bag limit, that person shall be punished by all of the following:

(a) A fine of not less than fifteen thousand dollars ($15,000) or more than forty thousand dollars ($40,000).

(b) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of that person. The person punished under this subdivision shall not, thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes, including, but not limited to, a commercial fishing license or a sport fishing or sport ocean fishing license. Notwithstanding any other provision of law, the commercial license or permit of a person arrested for a violation punishable under this section may not be sold, transferred, loaned, leased, or used as security for any financial transaction until disposition of the charges is final.

(c) Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense punishable under this section shall be seized, and shall be ordered forfeited in the same manner prescribed for nets or traps used in violation of this code, as described in Article 3 (commencing with Section 8630) of Chapter 3 of Part 3 of Division 6, or in the manner prescribed in Section 12157.

(d) Not less than 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the Wildlife Protection Division of the department and used for law enforcement purposes.

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

SOCIAL SERVICES—JUVENILES—CUSTODY

CHAPTER 754

A.B. No. 1697

AN ACT to amend Section 1211 of the Code of Civil Procedure, to amend Sections 750 and 7895 of the Family Code, to amend Section 11165.7 of the Penal Code, and to amend Sections 358.1 and 827 of the Welfare and Institutions Code, relating to judicial proceedings.

[Filed with Secretary of State October 12, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1697, Committee on Judiciary. Judicial proceedings: juveniles: manner of holding property.

Existing law requires each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence, as specified, to include a factual discussion of specified factors including, but not limited to, whether the county welfare department has considered child protective services, and what plan, if any, exists for the return of the child to his or her parents, among others.

This bill would additionally require the social worker or child advocate to consider whether the child has any siblings under the court's jurisdiction and information related thereto, as specified.

Existing law provides that the juvenile case file of a minor may only be inspected by certain persons, as specified.

This bill would authorize a commissioner or other hearing officer assigned to a family law case with issues concerning custody or visitation to inspect the case file, and, if actively participating in such a family law case, would authorize counsel appointed for the minor in the family law case to inspect the case file. It also would limit the authority given under existing law for inspection by family court mediators and child custody evaluators to those such persons who are actively participating in such a family law case.

Because this bill would increase the duties of local officials, it would create a state-mandated local program.

Existing law provides for the manner of holding property by husband and wife.

This bill would specify that husband and wife may hold property as community property with a right of survivorship.

Existing law authorizes an appellate court to appoint counsel for an indigent appellant upon appeal from a judgment freeing a child who is a dependent child of the juvenile court from parental custody and control. Existing law provides that those costs are a charge against the state.

This bill would instead provide that those costs are a charge against the court.

Existing law, the Child Abuse and Neglect Reporting Act, provides for the protection of children suspected to be subject to child abuse or neglect. Existing law further requires specified "mandated reporters" to report suspected child abuse or neglect to police departments, sheriff's departments, county probation departments, or county welfare departments.

This bill would additionally classify employees or volunteers of a Court Appointed Special Advocate program as "mandated reporters."

Since a failure to make a required report is a misdemeanor, the bill would impose a state-mandated local program by expanding the scope of a crime.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

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.

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

SECTION 1. Section 1211 of the Code of Civil Procedure is amended to read:

1211. (a) When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he or she be punished as therein prescribed.

When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers.

(b) In family law matters, filing of the Judicial Council form entitled "Order to Show Cause and Affidavit for Contempt (Family Law)" shall constitute compliance with this section.

SEC. 2. Section 750 of the Family Code is amended to read:

750. A husband and wife may hold property as joint tenants or tenants in common, or as community property, or as community property with a right of survivorship.

SEC. 3. Section 7895 of the Family Code is amended to read:

7895. (a) Upon appeal from a judgment freeing a child who is a dependent child of the juvenile court from parental custody and control, the appellate court shall appoint counsel for the appellant as provided by this section.

(b) Upon motion by the appellant and a finding that the appellant is unable to afford counsel, the appellate court shall appoint counsel for the indigent appellant, and appellant's counsel shall be provided a free copy of the reporter's and clerk's transcript. All of those costs are a charge against the court.

(c) The reporter's and clerk's transcripts shall be prepared and transmitted immediately after filing of the notice of appeal, at court expense and without advance payment of fees. If the appellant is able to afford counsel, the court may seek reimbursement from the appellant for the cost of the transcripts under subdivision (c) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

SEC. 4. Section 11165.7 of the Penal Code, as amended by Chapter 133 of the Statutes of 2001, is amended to read:

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

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

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

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

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

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

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

(11) A headstart teacher.

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

(13) A public assistance worker.

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

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

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

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

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

(20) A firefighter, except for volunteer firefighters.

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

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

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

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

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

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

(27) A coroner.

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

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

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

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(34) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

SEC. 5. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the child has siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(1) The nature of the relationship between the child and his or her siblings.

(2) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(3) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(4) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(5) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships, including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interest.

(e) Whether the * * * child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(f) Whether the parent has been advised of his or her option to participate in adoption planning, including the option to enter into a postadoption contact agreement as described in Section 8714.7 of the Family Code, and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(g) The appropriateness of any relative placement pursuant to Section 361. 3; however, this consideration shall not be cause for continuance of the dispositional hearing.

SEC. 6. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a)(1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

Exhibit 4
Copies of Code Sections Cited

§ 273a. Willful harm or injury to child; endangering person or health; punishment; conditions of probation

(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or

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inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3)(A) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

(Added by Stats.1905, c. 568, p. 759, § 5. Amended by Stats.1963, c. 783, p. 1811, § 1; Stats.1965, c. 697, p. 2091, § 1; Stats.1976, c. 1139, p. 5108, § 165, operative July 1, 1977; Stats.1980, c. 1117, p. 3590, § 4; Stats.1984, c. 1423, § 2, eff. Sept. 26, 1984; Stats.1993, c. 1253 (A.B.897), § 1; Stats.1994, c. 1263 (A.B.1328), § 3; Stats.1996, c. 1090 (A.B.3215), § 1; Stats.1997, c. 134 (A.B.273), § 1.)

§ 11164. Short title; intent and purpose of article

(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

(Amended by Stats.2000, c. 916 (A.B.1241), § 1.)

11165. Child

As used in this article "child" means a person under the age of 18 years.

(Added by Stats.1987, c. 1459, § 2.)

§ 11165.1. Sexual abuse; sexual assault; sexual exploitation

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration * * *), or 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(Amended by Stats.2000, c. 287 (S.B.1955), § 21.)

11165.2. Neglect; severe neglect; general neglect

As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

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§ 11165.3. Willful cruelty or unjustifiable punishment of a child

As used in this article, "willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

§ 11165.4. Unlawful corporal punishment or injury

As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

(Added by Stats.1987, c. 1459, § 10. Amended by Stats.1988, c. 39, § 1; Stats.1993, c. 346 (A.B.331), § 1.)

§ 11165.5. Abuse or neglect in out-of-home care

As used in this article, the term "abuse or neglect in out-of-home care" includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful cruelty or unjustifiable punishment of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by

§ 11165.6. Child abuse or neglect

As used in this article, the term "child abuse * * * or neglect" includes physical injury * * * inflicted by other than accidental means upon a child by another person * * *, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4 * * *. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

(Added by Stats.2000, c. 916 (A.B.1241), § 4. Amended by Stats.2001, c. 188 (A.B.102), § 2, eff. July 31, 2001.)

§ 11165.7. Mandated reporter

(a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

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

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

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

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

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

(11) A headstart teacher.

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

(13) A public assistance worker.

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

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

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

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

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

(20) A firefighter, except for volunteer firefighters.

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

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

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

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

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

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

(27) A coroner.

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

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

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

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(34) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

§ 11165.9. Reports of suspected child abuse or neglect

Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department * * * or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. * * * Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

(Added by Stats.2000, c. 916 (A.B.1241), § 8. Amended by Stats.2001, c. 133 (A.B.102), § 4, eff. July 31, 2001.)

§ 11165.14. Abuse of a pupil at a schoolsite; investigation of complaint; transmission of substantiated report

The appropriate local * * * law enforcement agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or * * * an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

(Amended by Stats.2000, c. 916 (A.B.1241), § 12.)

§ 11166. Report; duty; time

(a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report to the agency immediately or, as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

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

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

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

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

(c)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

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

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

(i) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it * * * makes a telephone report under this subdivision.

(Amended by Stats.2000, c. 916 (A.B.1241), § 16; Stats.2001, c. 133 (A.B.102), § 5, eff. July 31, 2001.)

§ 11166.5. Required statements of mandated reporters

(a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in * * * paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

* * *

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in * * * paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(Amended by Stats.2000, c. 916 (A.B.1241), § 20; Stats.2001, c. 133 (A.B.102), § 9, eff. July 31, 2001.)

§ 11168. Written reports; forms

The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be * * * distributed by the agencies specified in Section 11165.9.

§ 11174.3. Interviewing victim at school; presence of school staff member; confidentiality; admissibility of evidence; informing school districts and agency employees of section requirements

(a) Whenever a representative of a * * * government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the * * * agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each * * * agency specified in Section 11165.9 to receive 519 dated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect of the requirements of this section.

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY GRAY DAVIS, *Governor*

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EXHIBIT B

November 25, 2002

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Child Abuse and Neglect Reporting, 01-TC-21
San Bernardino Community College District, Claimant

Dear Ms. Higashi:

The California Department of Social Services (Department) submits the following preliminary comments to the test claim submitted by the San Bernardino Community College District regarding Interagency Child Abuse and Neglect (ICAN) Investigation Reports (01-TC-21) (Test Claim). It is the Department's position that the form and content of the Test Claim are fatally inadequate. The Claimant has failed to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by Title 2, California Code of Regulations (CCR), section 1183(e).

Title 2, California Code of Regulations (CCR), section 1183(e)(3) requires that: "All test claims or amendments thereto shall contain at least the following elements and documents:
(A) A written narrative which includes a detailed description of what activities were required under prior law or executive order, and
(B) What new program or higher level of service is required under the statute or executive order alleged to contain or impact a mandate, and
(C) Whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

The Claimant has failed to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by Title 2, California Code of Regulations (CCR), section 1183(e). Attaching 125 pages of statutory material, with pages upon pages of historical information for each section included, does not appear to satisfy this specificity requirement. The only discussion in the Test Claim which purportedly details what new program or higher level of service state law has allegedly required of the claimant is found in Part III,

commencing on page 121 of the Test Claim. According to Claimant, "new duties are mandated". (Test Claim, page 122 line 6) The description of exactly what these new duties are however cannot be discerned from the Test Claim.

Efforts to harvest specific factual assertions made by claimant in support of the proposition that it has incurred additional costs as a result of state mandates imposed subsequent to 1975 reveal very slim pickings. It is claimed for example that a mandated reporter must report facts to certain agencies. (See Test Claim, page 122, lines 11-17) Nowhere in the Test Claim does Claimant proffer information of how these activities differ from the reporting requirements which pre-existed 1975. Claimants assert that failure to comply with mandatory reporting requirements is a misdemeanor. (See Test Claim, page 122, lines 17-18 through page 123 line 2.) Nowhere in the Test Claim does Claimant proffer information of whether this fact differs in any way from facts which pre-existed 1975, or how the fact that a failure to report is a misdemeanor imposes any new activities upon Claimant.

Claimant asserts that Penal Code Section 11168 requires specific forms to be used by mandated reporters. (See Test Claim, page 123 lines 3-5.) Nowhere in the Test Claim does Claimant proffer information of whether use of this form results in increased activities or responsibilities. For all we know from the Test Claim, the use of the form actually reduces workload on mandatory reporters as compared to the type of information required to be reported prior to 1975.

Claimant asserts that the requirement found in Penal Code Section 11166(a) requiring reporting within 36 hours imposes additional costs. (See Test Claim, page 123 lines 7-9) Nowhere in the Test Claim does Claimant proffer information of how imposition of a deadline for the performance of a pre-existing mandated activity itself creates additional work. The issue of <u>when</u> one has to perform a mandated task is not probative to the question of whether new activities have been mandated.

Claimant's assertion that Penal Code Section 11165.14 imposes a duty to cooperate and assist law enforcement agencies lacks necessary evidentiary support. (See Test Claim, page 123 lines 10-12) First, Penal Code Section 11165.14 on its face imposes no such duty. Second, even assuming that such a duty is imposed, Claimant has not described what those duties are, or whether or not those duties are in excess of what reporting laws required prior to 1975.

Claimant asserts that Penal Code Section 11174.3 imposes a new mandated duty for a selected staff member to be present at an interview of a suspected victim when the victim so requests. (See Test Claim, page 123 lines 13-15) A closer examination of the statute however reveals that the selected staff member may <u>decline</u> the request to be present, and that the presence of the staff member is voluntary. The optional nature of the staff member's participation in the interview negates the mandate claim. Moreover, Claimant has failed to present any facts to support its view that this alleged mandate imposes responsibilities in excess of that which was required under law in 1975.

Claimant also asserts that Penal Code Section 11165.7 imposes mandated reporter training. (See Test Claim, page 123 lines 16-23) However, Claimant concedes that the training is optional, and can be avoided if it reports to the State Department of Education why such training was not provided. The form of the report is not specified in law. Therefore, the report can be transmitted orally or electronically, at no or de minimis cost to Claimant. Moreover, Claimant has not provided any facts to support its view that activities associated with such a report are in excess of that which was required under law in 1975.

Finally, Claimant asserts that Penal Code Section 11166.5 imposes a responsibility to obtain a signed statement from an employee that he or she acknowledges their reporting requirements. (See Test Claim, page 123 lines 14-28) Claimant however fails to proffer any evidence that it was necessary to modify employment forms or that employment forms were so modified. Moreover, Claimant has not provided any facts to support its view that activities associated with this requirement are in excess of that which was required under law in 1975.

In sum, Claimant has not provided a detailed description of what activities were required under prior law and what new program or higher level of service is required under the statute to contain or impact a mandate, as required by the Commission's Regulations at Title 2, California Code of Regulations (CCR), section 1183(e)(3). Without specific factual allegations to support Claimant's assertions, the Department is left to speculate what those additional mandated activities may be. Accordingly, the Department cannot discern sufficient information from the Test Claim to formulate a proper substantive response to it. Because the Test Claim lacks necessary elements under law, and because of those deficiencies noted herein, the Department cannot reasonably formulate a response on the merits of the claim the claim must be rejected by the Commission. The Department however reserves its right to respond on the merits should the Commission determine that the Test Claim complies with Title 2, California Code of Regulations (CCR), section 1183(e)(3).

For the reasons stated in these comments, San Bernardino Community College District's test claim regarding interagency child abuse and neglect reporting should be denied.

Respectfully submitted,

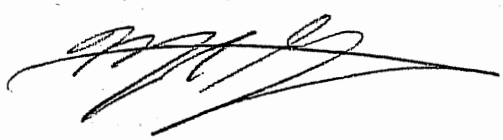

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EXHIBIT C

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November 26, 2002

Paula Higashi, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
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RE: Child Abuse and Neglect Reporting (01-TC-21)

Dear Ms. Higashi:

Before commenting briefly on the test claim submitted by the San Bernardino Community College District ("District") regarding Child Abuse and Neglect Reporting (01-TC-21), the Department of Finance ("Department") by this filing objects to the form and content of the test claim and supporting declarations, and requests that the Commission reject the test claim for failure to comply with Commission regulations. In the alternative, the Department requests that the Commission return the test claim to the District with instructions to resubmit a package that complies with the regulations governing the form and content of test claims. The Department specifically reserves the right to submit additional written comments and argument in response to a more specific test claim, and/or in response to the Commission's draft analysis.

Procedural Objections

Title 2, California Code of Regulations (CCR), section 1183(e) requires a test claim to identify the *specific sections* of a chaptered bill or executive order alleged to contain a mandate. The District's test claim contains 53 chaptered bills affecting at least 19 lengthy sections of the Penal Code. Instead of identifying the specific sections of these bills and statutes that allegedly contain a mandate, the District describes in abundant and unnecessary detail virtually every statutory change made by each of these session laws, whether or not those changes have any bearing on the District's test claim.

For example, the District states, "Chapter 1117, Statutes of 1980, Section 4 amended Penal Code Section 273a to specify possible state prison terms for a violation of Section 273a." (Test Claim, p. 16.) As a second example, the District states, "Chapter 905, Statutes of 1982, Section 1 amended Penal Code Section 11165 to add subdivision (l) to define 'commercial film and photographic print processor.'" (Test Claim, pp. 25-26.) Neither of these statutory changes would appear to have any relevance to a test claim that purports to identify costs to the District

associated with child abuse and neglect reporting. The test claim is replete with such irrelevant references. The Department requests that the Commission reject the claim for failure to comply with the specificity requirement in 2 CCR section 1183(e). In the alternative, the Department asks the Commission to strike all statements in the test claim that do not identify individual statutory sections alleged to contain a mandate affecting the District, or direct the District to do so.

Title 2 CCR section 1183(e)(3)(A) requires a claimant to identify the activities required under prior law, and section 1183(e)(3)(B) requires the claimant to identify the new program or higher level of service required under the applicable statute or executive order. Section 1183(e)(3)(c) requires the claimant to indicate whether there are costs to the claimant associated with the new program or higher level of service. Read together, these provisions appear to require the claimant to explain, for each statute alleged to contain a mandate, what duties were imposed under prior law, and how each statute imposes a new program or higher level of service *on the claimant.* Title 2 CCR section 1183(e)(5) appears to require the claimant to state that the alleged mandate contained in each statute identified results in costs to the claimant, or is estimated to result in costs to the claimant, in excess of $200. The District's claim does none of these things.

Substantive Objections

The District's claim states, "The new duties mandated by the state upon school districts, county offices of education, and community college districts require state reimbursement ...." (Test Claim, p. 122.) However, the District fails to point to any provision of law or regulation that defines a community college district as a mandated reporter within the meaning of Penal Code section 11165.7. While several versions of this section mention teachers and various school district employees, none of the enactments of this section cited by the claimant include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.) Since community college employees are not mandated reporters, the reports they make pursuant to the child abuse reporting laws, while desirable from a social policy standpoint, are not state-mandated within the meaning of Government Code section 17514. On this basis, the District's test claim should be denied.

As a final matter, the Department moves to strike the declaration of Michael Carr, Director of Student Services at the San Jose Unified School District. The statements of Mr. Carr concerning the costs allegedly incurred by the San Jose Unified School District in implementing the statutory child abuse reporting scheme do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4). The declaration is therefore irrelevant to the mandate claim submitted by the San Bernardino Community College District.

As previously stated, the Department specifically reserves the right to submit additional comments in the event a corrected and/or more specific test claim is required, or in response to the Commission's draft analysis of the test claim, pursuant to 2 CCR section 1183.07.

Sincerely,

MEG HALLORAN
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Susan S. Geanacou, Senior Staff Attorney, Department of Finance
Don Rascon, Principal Analyst, Department of Finance

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Child Abuse and Neglect Reporting;** No.: 01-TC-21
San Bernardino Community College District, Claimant
Penal Code Sections 273a, 11161.5, 11161.6, 11161.7, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.5, 11165.7, 11165.9, 11165.14, 11166, 11166.5, 11168, 11174.3
Statutes 2001, Chapter 754 et al. (AB 1697)

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550.

On November 26, 2002, I served the attached **Preliminary Comments on Test Claim 01-TC-02, Child Abuse and Neglect Reporting** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 26, 2002, at Sacramento, California.

SCOTT A. TAYLOR
Declarant

Signature

SERVICE LIST

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California State Firefighters' Association
2701 K Street, Suite 201
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Exhibit D

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December 19, 2002

Paula Higashi, Executive Director
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U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 01-TC-21
San Bernardino Community College District
Child Abuse and Neglect Reporting

Dear Ms. Higashi:

I have received the response of the Department of Finance ("DOF"), authored by the Attorney General's Office, dated November 26, 2002 to which I now respond on behalf of the test claimant.

It should be noted, as a threshold matter, that none of the objections of the DOF are relevant to the statutory exceptions to a finding of costs mandated by the state. (Government Code Section 17556)

1. The Comments of the DOF are Incompetent and Should be Excluded

Test claimant objects to the response of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DOF's comments do not comply with this essential requirement. Hence the entire document is incompetent and should be excluded from the record.

2. Test Claimant Has Complied With All Procedural Requirements

DOF argues that the Title 2 Regulations require a "test claim to identify the *specific sections* of a chaptered bill or executive order alleged to contain a mandate...(I)nstead of identifying the specific sections of these bills and statutes that allegedly contain a mandate, the District describes in abundant and unnecessary detail virtually every statutory change made by each of these session laws, whether or not those changes have any bearing on the District's test claim."

The Title 2 Regulations require more that just that. Section 1183(e) states that "All test claims...shall contain *at least* the following elements and documents." (Emphasis supplied) Subsection (3) requires a "written narrative which includes a *detailed description* of (A) What activities were required under prior law or executive order, and (B) What new program or higher level of service is required under the statute or executive order alleged to contain *or impact* a mandate, and (C) Whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556." (Emphasis supplied) The narrative, then, must contain a *detailed description* of what activities were required under prior law prior to 1975. This is found in the test claim at page 3, line 5 through page 5, line 17.

A narrative must also contain a *detailed description* of a statutory history of both the pre-1975 and the post-1974 statutes to show how pre-1975 duties have been changed or modified and to show how post-1974 duties have *impacted the mandate* by adding to or modifying, prior statutes. The goal of a narrative is to show what duties existed prior to 1975 and what duties have been added, modified or changed since 1974. In this particular test claim it is necessary to show who was required to report what, to whom, and when, prior to 1975 and how the law has evolved to show who is now required to report what, to whom, and when. Each and every change of the law, and each and every new law, throughout the narrative of the test claimant cites the specific chapter, year and section of the legislation.

The final requirement of the narrative, whether there are any costs mandated by the state, is found in the test claim at page 121, line 5, through page 122, line 5. It is therefore abundantly apparent that the test claimant has complied with the procedural requirements of Section 1183(e).

3. Some Employees of Community College Districts are Mandated Reporters

DOF next argues that "...the District fails to point to any provision of law or regulation that defines a community college district as a mandated reporter within the meaning of Penal Code section 11165.7."

Penal Code Section 11165.7, at subdivision (a)(1) includes "a teacher" within the definition of a mandated reporter. The inclusion of "teachers" is without limitation and DOF cites no authority to support its argument that instructors employed by community college districts are not "teachers".

In addition, subdivision (a)(8) includes within the definition of mandated reporters "An administrator or employee of a public or private organization whose duties require direct contact and supervision of children." Test claimant's declarant, Juliann Martin, states that she is the Chair of the Child Development and Family Consumer Science department of the district. In that capacity, she, and those of her department, are administrators and/or employees of a public organization whose duties require direct contact and supervision of children.

4. The Declaration of Michael Carr is both Competent and Relevant

DOF next argues that "...the Department moves to strike the declaration of Michael Carr...(T)he statements of Mr. Carr concerning the costs allegedly incurred by the San Jose Unified School District...do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4)."

First all, "costs alleged" do not require authentication. Section 1183(e)(4) only requires the authentication of "documentary evidence". This follows the well-known principle of law that only documents require authentication. An allegation of "actual and/or estimated costs...(that) exceed two hundred dollars ($200)" is made by a "statement", pursuant to subdivision (e)(5). The declaration of Mr. Carr makes no separate assertions of fact, it merely states that, in his capacity as the Director of Student Services, he is familiar with the training and reporting requirements of the code sections cited and "(I)t is estimated that the...District has incurred in excess of $200, annually,...to implement these new duties..." Pursuant to subdivision (e)(6), the test claim itself (which alleges new duties and costs for school districts, county offices of education and community college districts) "shall be signed at the end of the document, under penalty of perjury by the claimant..." This requirement is found following page 128 of the test claim.

In conclusion, the response of the DOF should be ignored as legally incompetent for its

failure to comply with Section 1183.02 of Title 5, California Code of Regulations. In addition, each of the arguments contained therein are factually and legally incorrect and should be disregarded.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

Original List Date: 07/03/2002 **Mailing Information** Other

Last Updated: 08/05/2002

List Print Date: 08/12/2002

Claim Number: 01-TC-21

Issue: Child Abuse and Neglect Reporting

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Commission on State Mandates

Original List Date: 07/03/2002 **Mailing Information** Other

Last Updated: 08/05/2002

List Print Date: 08/12/2002

Claim Number: 01-TC-21

Issue: Child Abuse and Neglect Reporting

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Original List Date: 07/03/2002 **Mailing Information** Other

Last Updated: 08/05/2002

List Print Date: 08/12/2002

Mailing List

Claim Number: 01-TC-21

Issue: Child Abuse and Neglect Reporting

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s. Nancy Wolfe, Assistant State Fire Marshal (A-45)
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O ALL PARTIES AND INTERESTED PARTIES: Each commission mailing list is continuously updated as requests are received to include or remove any arty or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at ny time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall multaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code egs., tit. 2, § 1181.2.)

SixTen and Associates
Mandate Reimbursement Services

EXHIBIT E

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January 17, 2003

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: 01-TC-21
Test Claim of San Bernardino Community College District
Child Abuse and Neglect Reporting

Dear Ms. Higashi:

I have received your letter dated December 31, 2002 which requests that I respond to the allegations of the Department of Social Services and Department of Justice since these letters raise "procedural and substantive issues." You deem that the test claimant's rebuttal is somehow connected to "the active participation of affected state agencies," although it is my understanding that any state agency response, as well as any test claimant rebuttal, is at the discretion of the parties.

It should be noted that I had not received a copy of the response from Social Services until your December 31, 2002 transmittal. We did receive a copy of the Department of Justice (for Finance) response dated November 26, 2002, to which we responded on December 19, 2002. A copy of that response is attached.

The response by Social Services does not add anything to the debate. Social Services concludes that the test claim is "fatally inadequate." This cannot be so, since the Commission accepted the test claim for filing. This test claim was filed in a format used for about twelve years and nearly 100 test claims. Regardless, I believe most of the concerns raised in the Social Services letter are addressed by our December 19, 2002 response to Justice. Other concerns will be addressed at the parameters and guidelines phase of the process.

However, I can appreciate that Ginsberg and Halloran, who are new to this process, are feeling the burden of slogging through nearly twenty-five years of legislative history which is required for the test claim process. They should take some consolation in that the work their state agencies must perform to comply with the process is just a fraction of the burden

placed upon the claimant and the Commission staff.

If the Commission would like the test claimant to modify its filing, please provide us with specific directions.

Sincerely,

Keith B. Petersen

c/mail: Service List

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December 19, 2002

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 01-TC-21
San Bernardino Community College District
Child Abuse and Neglect Reporting

Dear Ms. Higashi:

I have received the response of the Department of Finance ("DOF"), authored by the Attorney General's Office, dated November 26, 2002 to which I now respond on behalf of the test claimant.

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Test claimant objects to the response of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

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The Title 2 Regulations require more that just that. Section 1183(e) states that "All test claims...shall contain *at least* the following elements and documents." (Emphasis supplied) Subsection (3) requires a "written narrative which includes a *detailed description* of (A) What activities were required under prior law or executive order, and (B) What new program or higher level of service is required under the statute or executive order alleged to contain *or impact* a mandate, and (C) Whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556." (Emphasis supplied) The narrative, then, must contain a *detailed description* of what activities were required under prior law prior to 1975. This is found in the test claim at page 3, line 5 through page 5, line 17.

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In conclusion, the response of the DOF should be ignored as legally incompetent for its

failure to comply with Section 1183.02 of Title 5, California Code of Regulations. In addition, each of the arguments contained therein are factually and legally incorrect and should be disregarded.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

Original List Date: 7/3/2002
Last Updated: 8/29/2002
List Print Date: 12/31/2002
Claim Number: 01-TC-21
Issue: Child Abuse and Neglect Reporting

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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ATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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EXHIBIT F

October 17, 2007

Mr. Keith Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Draft Staff Analysis and Hearing Date
Child Abuse and Neglect Reporting; 01-TC-21
Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.14, 11166, 11166.5, 11168, 11174.3, Including Former Penal Code Sections 11161.5, 11161.6, 11161.7
Statutes 2001, Chapter 754 et al. (AB 1697)
San Bernardino Community College District, Claimant

Dear Mr. Petersen:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Wednesday, **November 7, 2007**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, December 6, 2007**, at 9:30 a.m. in Room 126, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about November 21, 2007. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Katherine Tokarski at (916) 445-9429 with any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosures

ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.14, 11166, 11166.5, 11168, and 11174.3, Including Former Penal Code Sections 11161.5, 11161.6, 11161.7

Statutes 1975, Chapter 226
Statutes 1976, Chapters 242 and 1139
Statutes 1977, Chapter 958
Statutes 1978, Chapter 136
Statutes 1979, Chapter 373
Statutes 1980, Chapters 855, 1071 and 1117
Statutes 1981, Chapters 29 and 435
Statutes 1982, Chapter 905
Statutes 1984, Chapters 1170, 1391, 1423, 1613, and 1718
Statutes 1985, Chapters 189, 464, 1068, 1420, 1528, 1572 and 1598
Statutes 1986, Chapters 248 and 1289
Statutes 1987, Chapters 640, 1020, 1418, 1444 and 1459
Statutes 1988, Chapters 39, 269 and 1580
Statutes 1990, Chapters 931 and 1603
Statutes 1991, Chapters 132 and 1102
Statutes 1992, Chapter 459
Statutes 1993, Chapters 346, 510 and 1253
Statutes 1994, Chapter 1263
Statutes 1996, Chapters 1080, 1081 and 1090
Statutes 1997, Chapters 83 and 134
Statutes 1998, Chapter 311
Statutes 2000, Chapters 287 and 916
Statutes 2001, Chapters 133 and 754

Child Abuse and Neglect Reporting
(01-TC-21)

San Bernardino Community College District, Claimant

EXECUTIVE SUMMARY

Background

San Bernardino Community College District filed a test claim on June 28, 2002, alleging that amendments to child abuse reporting statutes since January 1, 1975, have resulted in reimbursable increased costs mandated by the state. A declaration of costs incurred was also submitted by the San Jose Unified School District. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. Claimant alleges that all of these changes have imposed a reimbursable state-mandated program on school districts.

The Department of Finance and the Department of Social Services (DSS) both oppose the test claim, largely on procedural grounds. DSS also challenges the claim on several substantive points, particularly arguing that many of the provisions claimed do not in fact mandate that new duties be performed by school districts.

Staff finds that while many of the test claim statutes do not impose mandatory new duties on school districts, there are some new activities alleged that are not required by prior law, thus mandating a new program or higher level of service, as described below.

Conclusion

Staff concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities for K-12 school districts:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

  > The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)

Staff concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

STAFF ANALYSIS

Claimant

San Bernardino Community College District

Chronology

06/28/02	Claimant files the test claim with the Commission on State Mandates (Commission)
07/08/02	Commission staff issues the completeness review letter and requests comments from state agencies
08/02/02	Department of Finance (DOF) requests an extension of time for filing comments for 120 days, to consult with the Office of the Attorney General
08/05/02	Commission staff grants a 90-day extension to November 5, 2002
08/08/02	Department of Social Services (DSS) requests an extension of time to November 26, 2002
08/12/02	Commission staff grants the extension of time as requested
10/21/02	DOF files letter confirming that they also have an extension of time to file comments until November 26, 2002
11/25/02	DSS files comments on the test claim
11/26/02	DOF files comments on the test claim
12/26/02	Claimant files rebuttal to comments by DOF
12/31/02	Commission staff issues a request to the claimant for a response to the state agency comments
01/17/03	Claimant submits response to the Commission's request, responding to the DSS comments and referring to earlier response to DOF's comments
09/12/07	Commission staff requests comments from the California Community Colleges
10/17/07	Commission staff issues the draft staff analysis on the test claim

Background

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program on schools districts. A separate test claim, *Interagency Child Abuse and Neglect Investigation Reports* (00-TC-22), was filed by the County of Los Angeles on behalf of local agencies on many of the same statutes. The two test claims present a number of separate issues of law and fact and were not consolidated.

A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and substantively amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or "CANRA."

The Court in *Stecks v. Young* (1995) 38 Cal.App.4th 365, 370-371, provides an overview of the Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq.:

> For more than 30 years, California has used mandatory reporting obligations as a way to identify and protect child abuse victims. In 1963, the Legislature passed former section 11161.5, its first attempt at imposing upon physicians and surgeons the obligation to report suspected child abuse. Although this initial version and later ones carried the risk of criminal sanctions for noncompliance, the state Department of Justice estimated in November 1978 that only about 10 percent of all cases of child abuse were being reported. (*Krikorian v. Barry* (1987) 196 Cal.App.3d 1211, 1216-1217 [242 Cal.Rptr. 312].)
>
> Faced with this reality and a growing population of abused children, in 1980 the Legislature enacted the Child Abuse Reporting Law (§ 11165 et seq.), a comprehensive scheme of reporting requirements "aimed at increasing the likelihood that child abuse victims are identified." (*James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 254 [21 Cal.Rptr.2d 169], citing *Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 90 [270 Cal.Rptr. 379].) The Legislature subsequently renamed the law the Child Abuse and Neglect Reporting Act (Act) (§ 11164). (Stats. 1987, ch. 1444, § 1.5, p. 5369.)
>
> These statutes, all of which reflect the state's compelling interest in preventing child abuse, are premised on the belief that reporting suspected abuse is fundamental to protecting children. The objective has been to identify victims, bring them to the attention of the authorities, and, where warranted, permit intervention. (*James W. v. Superior Court, supra,* 17 Cal.App.4th at pp. 253-254.)

Claimant's Position

San Bernardino Community College District's June 28, 2002[1] test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege new activities for school districts, county offices of education, and community college districts, as follows:[2]

- Mandated reporting of known or suspected child abuse to a police or sheriff's department, or to the county welfare department, as soon as practicable by telephone, and in writing within 36 hours. (Pen. Code, §§ 11165.9 and 11166, subd. (a).) "All mandated reporters are further compelled to report incidents of child abuse or neglect by the fact that failure to do so is a misdemeanor, pursuant to Penal Code Section 11166, Subdivision (b)."
- Mandated reports "are required to be made on forms adopted by the Department of Justice" (Pen. Code, § 11168.)

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[1] The potential reimbursement period begins no earlier than July 1, 2000, based upon the filing date for this test claim. (Gov. Code, § 17557.)

[2] Test Claim Filing, pages 122-124.

- "To assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." (Pen. Code, § 11165.14.)
- "To notify the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." (Pen. Code, § 11174.3.)
- "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided." (Pen. Code, § 11165.7, subd. (d).)
- "When training their mandated reporters in child abuse or neglect reporting, to supply those trainees with a written copy of their reporting requirements and a written disclosure of their confidentiality rights." (Pen. Code, § 11165.7, subd. (c).)
- "To obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties." (Pen. Code, § 11166.5.)

The filing includes a declaration from the San Bernardino Community College District Chair of Child Development and Family and Consumer Science, and a declaration from the San Jose Unified School District, Director of Student Services, stating that each of the districts have incurred unreimbursed costs for the above activities.

The claimant rebutted the state agency comments on the test claim filing in separate letters dated December 19, 2002 (responding to DOF), and January 17, 2003 (responding to DSS). The claimant's substantive arguments will be addressed in the analysis below.[3]

Department of Finance Position

In comments filed November 26, 2002, DOF alleges the test claim does not meet basic test claim filing standards, and "requests that the Commission reject the claim for failure to comply with

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[3] In the December 19, 2002 rebuttal, the claimant argues that the state DOF comments are "incompetent" and should be stricken from the record since they do not comply with the Commission's regulations (Cal. Code Regs, tit. 2, § 1183.02, subd. (d).) That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that "DOF's comments do not comply with this essential requirement."

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied upon by staff at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The state agency responses contain comments on whether the Commission should approve this test claim and are, therefore, not stricken from the administrative record.

the specificity requirement in 2 CCR section 1183(e)." Further, DOF argues that the claim should be denied, because:

> [T]he District fails to point to any provision of law or regulation that defines a community college district as a mandated reporter within the meaning of Penal Code section 11165.7. While several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.) ...
>
> As a final matter, the Department moves to strike the declaration of ... Director of Student Services at the San Jose Unified School District [because the statements] do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4). The declaration is therefore irrelevant to the mandate claim submitted by the San Bernardino Community College District.

Department of Social Services Position

DSS's comments on the test claim filing, submitted November 25, 2002, also argue that the test claim as submitted fails "to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by Title 2, California Code of Regulations (CCR), section 1183(e)."

DSS also challenges the claim on several substantive points including: arguing that Penal Code section 11165.14 does not impose a duty on its face to cooperate and assist law enforcement agencies, as pled; and the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim." In addition, DSS asserts that the training of mandated reporters "is optional, and can be avoided if it reports to the State Department of Education why such training was not provided [and] the report can be transmitted orally or electronically, at no or de minimis cost to Claimant."

Discussion

The courts have found that article XIII B, section 6, of the California Constitution[4] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[5] "Its

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[4] Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[5] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[6] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[7] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[8]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[9] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[10] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[11]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[12]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[13] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[14]

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[6] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[7] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[8] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar)*.

[9] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[12] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[13] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[14] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue 1: Does the Commission have jurisdiction over the test claim pleadings and the community college district as a party to the test claim?

(A) Sufficiency of the Test Claim Pleadings

As a preliminary matter, DSS and DOF challenged the sufficiency of the test claim pleadings in comments filed November 25 and 26, 2002, respectively.

Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the claimant is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim. At the time of the test claim filing on June 28, 2002, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:[15]

> All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:
>
> (1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

The regulation also required copies of all "relevant portions of" law and "[t]he specific chapters articles sections, or page numbers must be identified," as well as a detailed narrative describing the prior law and the new program or higher level of service alleged. Staff finds that the Commission has jurisdiction over the statutes and code sections listed on the test claim title page and described in the narrative, and each will be analyzed below for the imposition of a reimbursable state mandated program.

(B) Community College District as a Party to the Test Claim

DOF also raised the issue that the claimant, as a community college district, is not a proper party to the claim because "[w]hile several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.)"

Staff finds that the term "teachers," as used in the Child Abuse and Neglect Reporting Act, is inclusive of community college district teachers. The term is deliberately broad as it is used in the statutory list of mandatory child abuse reporters. That list is currently found at Penal Code section 11165.7, and begins:

> (a) As used in this article, "mandated reporter" is defined as any of the following:
>
> (1) A teacher.
> (2) An instructional aide.
> (3) A teacher's aide or teacher's assistant employed by any public or private

[15] The required contents of a test claim are now codified at Government Code section 17553.

school.
(4) A classified employee of any public school.
(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school. ...

An Attorney General Opinion (72 Ops.Cal.Atty.Gen. 216 (1989)) analyzed the wording of earlier versions of the statutory scheme to find that a ballet teacher at a post-secondary private school in San Francisco was included in the meaning of the word "teacher," as used in CANRA, when the school admitted students as young as eight years old.[16] The opinion goes into great detail using statutory construction to deduce the legislative meaning of the word "teacher" in this context. Finding that the word "teacher" is now singled out in the statute without any qualification, the opinion reaches the following conclusion:

> Without intending to suggest that the meaning of the word "teacher" as found in the Act is without bounds and mandates a reporting duty on any person who happens to impart some knowledge or skill to a child, we do not accept the proffered limitation that it applies only to teachers in K-12 schools. We find nothing in the statutory language of the Child Abuse and Neglect Reporting Act to support such a limitation on the plain meaning of the word "teacher".
>
> ¶ ... ¶
>
> The Child Abuse and Neglect Reporting Act imposes a duty on "teachers" to report instances of child abuse that they come to know about or suspect in the course of their professional contact in order that child protective agencies might take appropriate action to protect the children. We are constrained to interpret the language of the Act according to the ordinary meaning of its terms to effect that purpose. Doing so, we conclude that a person who teaches ballet at a private ballet school is a "teacher" and thus a "child care custodian" as defined by the Act, and therefore has a mandatory duty to report instances of child abuse under it.

The term "teacher" is applied to community college instructors elsewhere in the Penal Code, and in case law.[17] CANRA is aimed at the protection of individuals under the age of 18 from child abuse and neglect;[18] therefore it is significant that community colleges are required to serve some students under 18 years old. Education Code section 76000 provides that "a community college district shall admit to the community college any California resident ... possessing a high school diploma or the equivalent thereof." Education Code section 48412 requires that the proficiency exams be offered to any students "16 years of age or older," who has or will have completed 10th grade, and "shall award a "certificate of proficiency" to persons who demonstrate that

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[16] "An opinion of the Attorney General "is not a mere 'advisory' opinion, but a statement which, although not binding on the judiciary, must be 'regarded as having a quasi judicial character and [is] entitled to great respect,' and given great weight by the courts." (*Community Redevelopment Agency of City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 727.)

[17] For examples, see Penal Code section 291.5 and *Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d 82.

[18] Penal Code sections 11164 and 11165.

proficiency. The certificate shall be equivalent to a high school diploma." Thus 16 and 17 year olds can be regular students at community colleges.

Therefore, staff finds that the Commission has jurisdiction to decide a test claim filed by a community college district, as some of the claimed activities apply to employers of mandated reporters, including teachers. However, the issue of community college districts being "school districts" within the meaning of CANRA is more complex, and will be analyzed as the term appears in the test claim statutes below.

Issue 2: Do the test claim statutes mandate a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by school districts.[19] Thus, in order for a test claim statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that school districts perform an activity or task.

The test claim allegations will be analyzed by areas of activities, as follows: (a) mandated reporting of child abuse and neglect; (b) training mandated reporters; (c) investigation of suspected child abuse involving a school site or a school employee; (d) employee records. The prior law in each area will be identified.

(A) Mandated Reporting of Child Abuse and Neglect

Penal Code Section 11164:

The test claim pleadings include Penal Code section 11164.[20] Subdivision (a) states that the title of the article is the "Child Abuse and Neglect Reporting Act," and subdivision (b) provides that "[t]he intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."

A recent published decision in the 1st District Court of Appeals, *Jacqueline T.*, examined Penal Code section 11164 and found "the statute imposed no mandatory duty on County or Employees. Rather, the statute merely stated the Legislature's "intent and purpose" in enacting CANRA, an article composed of over 30 separate statutes."[21] In reaching this conclusion, the court relied on reasoning from *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639 [*Terrell R.*]:

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[19] *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

[20] Added by Statutes 1987, chapter 1459; amended by Statutes 2000, chapter 916.

[21] *Jacqueline T. v. Alameda County Child Protective Services* (Sept. 20, 2007, A116420) ___ Cal.App.4th ___ [p. 14]. Although the official cite is not yet available, California Rules of Court, rule 8.1115(d) states: "A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published."

> An enactment creates a mandatory duty if it requires a public agency to take a particular action. (*Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.) An enactment does not create a mandatory duty if it merely recites legislative goals and policies that must be implemented through a public agency's exercise of discretion. (*Ibid.*) The use of the word "shall" in an enactment does not necessarily create a mandatory duty. (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 910-911, fn. 6 [136 Cal.Rptr. 251, 559 P.2d 606]; *Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.)

Staff also finds this statement of law persuasive, and the *Jacqueline T.* court's legal finding on the nature of section 11164 as merely an expression of legislative intent is directly on point with the case at hand. Therefore, staff finds that Penal Code section 11164 does not mandate a new program or higher level of service on school districts.

Penal Code Sections 11165.9, 11166, and 11168, Including Former Penal Code Section 11161.7:

Penal Code section 11166,[22] subdivision (a), as pled, provides that "a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." Penal Code section 11165.9 requires reports be made "to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department." Penal Code section 11168[23] (derived from former Pen. Code, § 11161.7)[24] requires the written reports to be made on forms "adopted by the Department of Justice."

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes 1974, chapter 348, required specified medical professionals, public and private school officials

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[22] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[23] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

[24] Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

> (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department;[25] or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

The list of "mandated reporters," as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,[26] includes all of the original reporters and now also includes teacher's aides and other classified school employees and many others.

Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:[27]

> Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

Article XIII B, section 6 does not require reimbursement for "[l]egislation defining a new crime or changing an existing definition of a crime."[28] Staff finds that reporting activities required of

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[25] Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

[26] Added by Statutes 2000, chapter 916.

[27] This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

[28] California Constitution, article XIII B, section 6, subdivision (a)(2).

mandated reporters, even when they are employees of a school district, are exempt from mandate reimbursement because failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated reporter to criminal liability. Therefore, staff finds that Penal Code sections 11165.9, 11166, and 11168, (including former Penal Code section 11161.7), do not mandate a new program or higher level of service on school districts for activities required of mandated reporters.

Definitions: Penal Code Sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program.

Penal Code section 11165.6,[29] as pled, defines child abuse as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1[30]), neglect (§ 11165.2[31]), willful cruelty or unjustifiable punishment (§ 11165.3[32]), unlawful corporal punishment or injury (§ 11165.4[33]), and abuse or neglect in out-of-home care (§ 11165.5[34]). The test claim also alleges the statute defining the term child (§ 11165[35]).

While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with any of the other test claim statutes, they mandate a new program or higher level of service by increasing the scope of required activities within the child abuse and neglect reporting program.

Penal Code section 11165 defines the word child as "a person under the age of 18 years." This is consistent with prior law, which has defined child as "a person under the age of 18 years" since the child abuse reporting law was reenacted by Statutes 1980, chapter 1071. Prior to that time, mandated reporting laws used the term minor rather than child. Minor was not defined in the Penal Code, but rather during the applicable time the definition was found in the Civil Code, as

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[29] As repealed and reenacted by Statutes 2000, chapter 916.

[30] Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287; derived from former Penal Code section 11165 and 11165.3.

[31] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

[32] Added by Statutes 1987, chapter 1459.

[33] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

[34] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

[35] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

"an individual who is under 18 years of age."[36] Thus no substantive changes have occurred whenever the word child has been substituted for the word minor.

Former Penal Code section 11161.5 mandated child abuse reporting when "the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor." The prior law of Penal Code section 273a[37] follows:

> (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.
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> (2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

Staff finds that the definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

Staff finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled.

Penal Code section 11165.1 provides that sexual abuse, for purposes of child abuse reporting, includes sexual assault or sexual exploitation, which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and "obscene sexual conduct." Prior law required reporting of sexual molestation, as well as "unjustifiable physical pain or mental suffering."

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[36] Former Civil Code section 25; reenacted as Family Code section 6500 (Stats. 199, ch. 162, operative Jan. 1, 1994.)

[37] Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the criminal penalties amended by Statutes 1976, chapter 1139, Statutes 1980, chapter 1117, Statutes 1984, chapter 1423, Statutes 1993, chapter 1253, Statutes 1994, chapter 1263, Statutes 1996, chapter 1090, and Statutes 1997, chapter 134, as pled, but the description of the basic crime of child abuse and neglect remains good law.

Sexual molestation is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone "who annoys or *molests* any child under the age of 18." In a case regularly cited to define "annoy or molest," *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

> The primary purpose of the above statute is the 'protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.' (*People v. Moore*, *supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words 'annoy' and 'molest' are synonymously used (Words and Phrases, perm. ed., vol. 27, 'molest'); they generally refer to conduct designed 'to disturb or irritate, esp. by continued or repeated acts' or 'to offend' (Webster's New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to 'offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.' (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation which is forbidden is 'not concerned with the state of mind of the child' but it is 'the objectionable acts of defendant which constitute the offense,' and if his conduct is 'so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would 'annoy or molest' within the purview of' the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

By use of the general term sexual molestation in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of "offenses against children, [with] a connotation of abnormal sexual motivation." Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that neglect, as used in the Child Abuse and Neglect Reporting Act, includes situations "where any person having care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered," "*including* the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care." Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child "in such situation that its person or health may be endangered," as described in prior law, above. Thus the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where "[a]ny person ... willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering." The current definition of willful cruelty or unjustifiable punishment of a child, found at Penal Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.[38]

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits "any cruel or inhuman corporal punishment or injury resulting in a traumatic condition." Again, prior law required reporting of any non-accidental injuries, willful cruelty,

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[38] Penal Code section 273a distinguishes between those "circumstances or conditions likely to produce great bodily harm or death" (felony), and those that are not (misdemeanor).

and "unjustifiable physical pain or mental suffering," which encompasses all of the factors described in the definition for reportable unlawful corporal punishment or injury. The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines abuse or neglect in out-of-home care as all of the previously described definitions of abuse and neglect, "where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency." Prior law required reporting of abuse by "any person," and neglect by anyone who had a role in the care of the child.[39] Thus any abuse reportable under section 11165.5 would have been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to abuse or neglect in out-of-home care from the general definition of child abuse and neglect at Penal Code section 11165.6.

Therefore, staff finds that Penal Code sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service on school districts by increasing the scope of child abuse and neglect reporting.

(B) Training Mandated Reporters:

Penal Code Section 11165.7:

The claimant is also requesting reimbursement for training mandated reporters based on Penal Code section 11165.7.[40] Penal Code section 11165.7, subdivision (a), now includes the complete list of professions that are considered mandated reporters of child abuse and neglect; subdivision (b), as pled, provides that volunteers who work with children "are encouraged to obtain training in the identification and reporting of child abuse." The code section continues, as amended by Statutes 2001, chapter 754:

> (c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
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> (d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report

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[39] *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: "No special meaning attaches to this language [care or custody] "beyond the plain meaning of the terms themselves. The terms 'care or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)"

[40] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754.

to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

Specifically, claimant alleges a reimbursable state mandate for school districts: "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided."[41]

DSS argues there is no express duty in the test claim statute for school districts, as employers or otherwise, to provide training to mandated reporters. On page 3 of the November 25, 2002 comments, DSS states:

> Claimant also asserts that Penal Code Section 11165.7 imposes mandated reporter training. (See Test Claim, page 123 lines 16-23) However, Claimant conceded that the training is optional, and can be avoided if it reports to the State Department of Education why such training was not provided. The form of the report is not specified in law. Therefore, the report can be transmitted orally or electronically, at no or de minimis cost to Claimant. Moreover, Claimant has not provided any facts to support its view that activities associated with such a report are in excess of that which was required under law in 1975.

Some history of Penal Code section 11165.7 is helpful to put the training language into legislative context. This section was substantively amended by Statutes 2000, chapter 916; prior o that amendment, subdivision (a) did not provide the complete list of mandated reporters, but instead defined the term "child care custodian" for the purposes of the Child Abuse and Neglect Reporting Act. The definition provided that a "child care custodian" included "an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; [and] a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education." All other categories of "child care custodian" defined in former Penal Code section 11165.7, including teachers, child care providers, social workers, and many others, were not dependent on whether the individual had received training on being a mandated reporter. Following the definition of "child care custodian," the prior law of section 11165.7 continued:

> (b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
>
> (c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall

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[41] Test Claim Filing, page 123.

report to the State Department of Education the reasons why this training is not provided.

(d) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

Thus, public and private school teacher's aides, and classified employees of public schools, were only "child care custodians," and by extension, mandated reporters, *if* they received training in child abuse identification and reporting. However, even under prior law, employers were not legally required to provide such training.

In *City of San Jose v. State of California,* the court clearly found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[42] The court concluded "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[43] No mandatory language is used to require employers to provide mandated reporter training. Therefore, based on the plain language of the statute,[44] staff finds that Penal Code section 11165.7, as pled,[45] does not mandate a new program or higher level of service upon school districts for providing training to mandated reporter employees.

However, if mandated reporter training is not provided, the code section requires that school districts "shall report to the State Department of Education the reasons why." DSS argues that the reporting should be de minimis, and therefore not reimbursable. Staff finds that mandates law does not support this conclusion. The concept of a de minimis activity does appear in

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[42] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

[43] *Id.* at page 1817.

[44] "'[W]hen interpreting a statute we must discover the intent of the Legislature to give effect to its purpose, being careful to give the statute's words their plain, commonsense meaning.'" [Citation omitted.] *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261.

[45] Statutes 2004, chapter 842 amended subdivision (c), regarding training for mandated reporters. Current law now provides "(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5."

Staff notes that "strongly encouraged" is not mandatory language, but an expression of legislative intent (see *Terrell R., supra,* 102 Cal.App.4th 627, 639.) In addition, "'Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " [Citation omitted.] That purpose is not necessarily to change the law. 'While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.'" *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568.

mandates case law – most recently in the California Supreme Court opinion on *San Diego Unified School Dist.*, which described a de minimis standard as it applied in a situation where there was an existing federal law program on due process procedures, but the state then added more, by "articulat[ing] specific procedures, not expressly set forth in federal law."[46] The Court found that "challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimis—should be treated as part and parcel of the federal mandate." The Court recognized that it was unrealistic to expect the Commission to determine which statutory procedures were required for minimum federal standards of due process, versus any "excess" due-process standards only required by the state.

The Court did not come up with a dollar amount as a threshold for determining de minimis additions to an existing non-reimbursable program, nor any other clear standard; simply finding that the costs and activities must be de minimis, "in context." The context described by the Court in *San Diego* does not have a parallel here. The activity of reporting to the State Department of Education on the lack of training is a new activity clearly severable and distinct from any other part of the Child Abuse and Neglect Reporting Program, and is not implementing a larger, non-reimbursable program.

Finally, there must be a determination of what is meant by "school districts" in the context of this statute – did the Legislature intend that community college districts be included in this requirement? "School district" is not defined in this code section or elsewhere in CANRA, nor is there a general definition to be used in the Penal Code as a whole. Rules of statutory construction demand that we first look to the words in context to determine the meaning.[47]

The report is required to be made to the State Department of Education, which generally controls elementary and secondary education. The State Department of Education is governed by the Board of Education. Education Code section 33031 provides: "The board shall adopt rules and regulations not inconsistent with the laws of this state (a) for its own government, (b) for the government of its appointees and employees, (c) for the government of the day and evening elementary schools, the day and evening secondary schools, and the technical and vocational schools of the state, and (d) for the government of other schools, *excepting* the University of California, the California State University, and *the California Community Colleges*, as may receive in whole or in part financial support from the state."

A community college district generally provides post-secondary education, and the controlling state organization is the California Community Colleges Board of Governors.[48] Particularly since the reorganization of the Education Code by Statutes 1976, chapter 1010, there are growing statutory distinctions between K-12 "school districts" and "community college districts"

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[46] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 888.

[47] "Statutory language is not considered in isolation. Rather, we 'instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.'" *Bonnell v. Medical Bd. of California, supra,* 31 Cal.4th 1255, 1261.

[48] Education Code section 70900 et seq.

throughout the code, including the Penal Code.[49] While these factors alone are not controlling, the fact that the training reporting requirement is limited to "school districts" and not all public and private schools, or even all employers of mandated reporters, is indication that the legislative intent was limited, and that school districts should be interpreted narrowly. Therefore, staff finds that the term "school districts" refers to K-12 school districts and is exclusive of community college districts in this case.

Thus, staff finds that Penal Code section 11165.7, subdivision (d), mandates a new program or higher level of service on K-12 school districts, as follows:

- Report to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws.

(C) Investigation of Suspected Child Abuse Involving a School Site or a School Employee

Penal Code Sections 11165.14 and 11174.3:

The claimant alleges that Penal Code section 11165.14 mandates school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site."[50] DSS argues Penal Code section 11165.14 does not impose a duty on its face to cooperate with and assist law enforcement agencies.

Penal Code section 11165.14,[51] addresses the duty of law enforcement to "investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite." Staff finds that the plain language of Penal Code section 11165.14 does not require any unique activities of school district personnel as alleged by the claimant; therefore Penal Code section 11165.14 does not impose a new program or higher level of service on school districts.

Claimant further alleges a reimbursable state mandate is imposed by Penal Code section 11174.3;[52] the code section, as pled, follows:

> (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any

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[49] Penal Code section 291, 291.1 and 291.5 set up separate statutes for law enforcement informing public schools, private schools, and community college districts, respectively when a teacher, instructor or other employees are arrested for sex offenses.

[50] Test Claim Filing, page 123.

[51] Added by Statutes 1991, chapter 1102, and amended by Statutes 2000, chapter 916.

[52] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916.

adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

Claimant alleges that the mandated activities include notifying "the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." DSS argues that the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim."

As discussed above, the court in *City of San Jose, supra,* found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[53] Penal Code section 11174.3 states: "A staff member selected by a child may decline the request to be present at the interview." Thus, staff finds that the optional nature of a school staff member's participation in the investigative interview process does not impose a reimbursable state-mandated program on school districts for participation in that activity.

In addition, there must be a determination of whether there was legislative intent that the terms "school" or "school districts," as used in this code section includes community colleges. In *Delaney v. Baker* (1999) 20 Cal.4th 23, 41-42, the Court found:

> It is, of course, "generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute." (*People v. Dillon* (1983) 34 Cal.3d 441, 468

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[53] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

[194 Cal.Rptr. 390, 668 P.2d 697].) But that presumption is rebuttable if there are contrary indications of legislative intent.

Staff is unable to find any indications of legislative intent to indicate that community college districts were intended to be included in the use of the terms "school" or "school district" within Penal Code section 11174.3; therefore the terms are given the same meaning as determined for Penal Code section 11165.7, above, as excluding community college districts.

Therefore, based on the plain language of the statute, staff finds that Penal Code section 11174.3 mandates a new program or higher level of service on K-12 school districts for the following activity:

- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school.

(D) Employee Records

Penal Code Section 11166.5:

Penal Code section 11166.5,[54] subdivision (a), as pled, follows, in pertinent part:

> (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations

[54] Added by Statutes 1984, chapter 1718, and amended by Statutes 1985, chapters 464 and 1598, Statutes 1986, chapter 248, Statutes 1987, chapter 1459, Statutes 1990, chapter 931, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapter 1081, Statutes 2000, chapter 916, and Statutes 2001, chapter 133 (oper. Jul. 31, 2001.)

under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.[55]

¶...¶

The signed statements shall be retained by the employer or the court [regarding child visitation monitors], as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

Subdivisions (b) through (d) are specific to the state, or concern court-appointed child visitation monitors, and are not applicable to the test claim allegations.

The claimant alleges that the code section requires school districts "[t]o obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties."

DSS argues that the claimant has not offered "any evidence that it was necessary to modify employment forms or that employment forms were so modified." Staff notes that determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law.[56] A properly filed test claim alleging a new program or higher level of service was mandated by statute(s) or executive order(s), including declarations that the threshold level of costs mandated by the state were imposed pursuant to Government Code sections 17514 and 17564, is generally sufficient for the Commission to reach a legal conclusion on the merits.

Staff finds that the basic requirements of section 11166.5, subdivision (a) were first added to law by Statutes 1984, chapter 1718. The law affected employers of many categories of what are now termed "mandated reporters."

The California Supreme Court in *County of Los Angeles v. State of California, supra,* found that "new program or higher level of service" addressed "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy impose

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[55] The amendment by Statutes 2000, chapter 916 removed a detailed statement of the content Penal Code section 11166 that was to be included in the form provided by the employer – and instead provides more generically that "The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166." Staff finds that the essential content requirements for the form remain the same.

In addition, Statutes 2000, chapter 916 first added the requirement that "The employer shall provide a copy of Sections 11165.7 and 11166 to the employee."

[56] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

unique requirements on local governments and do not apply generally to all residents and entities in the state."[57] In *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545-1546, the court applied the reasoning to a claim for mandate reimbursement for elevator safety regulations that applied to all public and private entities.

> County acknowledges the elevator safety regulations apply to all elevators, not just those which are publicly owned. FN4 As these regulations do not impose a "unique requirement" on local governments, they do not meet the second definition of "program" established by *Los Angeles*.
>
> FN4. An affidavit submitted by State in support of its motion for summary judgment established that 92.1 percent of the elevators subject to these regulations are privately owned, while only 7.9 percent are publicly owned or operated.
>
> Nor is the first definition of "program" met. ¶ ...¶ In determining whether these regulations are a program, the critical question is whether the mandated program carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not "a governmental function of providing services to the public." FN5
>
> FN5. This case is therefore unlike *Lucia Mar, supra,* in which the court found the education of handicapped children to be a governmental function (44 Cal.3d at p. 835, 244 Cal.Rptr. 677, 750 P.2d 318) and *Carmel Valley, supra,* where the court reached a similar conclusion regarding fire protection services. (190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795.)

In this case, the statutory requirements apply equally to public and private employers of any individuals described as mandated reporters within CANRA. The alternative prong of demonstrating that the law carries out the governmental function of providing a service to the public is also not met. In this case, staff finds that informing newly-employed mandated reporters of their legal obligations to report suspected child abuse or neglect is not inherently a *governmental function* of providing service to the public, any more than providing safe elevators. Therefore, Penal Code section 11165.5 does not mandate a new program or higher level of service on school districts.

Issue 3: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564. A declaration of costs incurred was also submitted by the San Jose Unified School District.[58] Government Code section

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[57] *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56.

[58] Test Claim Filing, exhibit 1.

17556 provides exceptions to finding costs mandated by the state. Staff finds that none have applicability to deny this test claim. Thus, for the activities listed in the conclusion below, staff finds accordingly that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

CONCLUSION

Staff concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities for K-12 school districts:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)[59]
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)[60]

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[59] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.

[60] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.

Staff concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

Commission on State Mandates

Original List Date: 7/3/2002
Last Updated: 10/16/2007
List Print Date: 10/17/2007
Claim Number: 01-TC-21
Issue: Child Abuse and Neglect Reporting

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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November 7, 2007

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: 01-TC-21
San Bernardino Community College District
Chapter 226, Statutes of 1975, et al
Child Abuse and Neglect Reporting

Dear Ms. Higashi:

I have received a copy of the Draft Staff Analysis dated October 17, 2007, for the above referenced test claim, to which I respond on behalf of the test claimant.

1. New crime exclusion to reimbursement (Sections 11165.9, 11166, and 11168)

The Draft Staff Analysis (DSA) concludes (DSA 12, 13) as a threshold finding of law, that Penal Codes Sections 11165.9, 11166, and 11168 (including former Section 11161.7) do not mandate a new program or higher level of services based on the Article XIIIB, Section 6-exception to reimbursement for legislation which defines a new crime or changes an existing definition of a crime. However, the DSA does not cite or analyze any court cases which construe this provision for its relevance to the mandated activities alleged by the test claim.

Commission staff has misconstrued the constitutional exception and has also ignored Government Code Section 17556, subdivision (g), which excludes reimbursement "only for that portion of the statute relating directly to the enforcement of the crime or infraction." The test claim alleges reimbursable activities for the mandated reporters to report observed child abuse and neglect. The reporting is compelled both by affirmative law (Section 11165.1) and by penal coercion (Section 11166). The test claim does not allege mandated costs to enforce the crime of failure to report which would be excluded by subdivision (g).

Since the constitutional exception to reimbursement is not applicable, staff now has to return to these code sections and make findings which compare the duties and scope of the code sections prior to1975 with those code sections subsequent to 1974. CANRA includes more persons in the school system as mandated reporters so there is an increased level of service for the public. The statutes prior to 1975 (Sections 273a added in 1905 and 11161.5 added in 1963) essentially limited reportable events to wilful molestation and physical abuse. The post-1974 CANRA statutes add as new duties the entire scope of "neglect" offenses to be reported, which constitutes an increased level of service. However, the DSA (14) alleges that the pre-1975 definition of abuse and neglect is "very broad" and "sweeping" which somehow encompasses all possible future definitions. To the contrary, the new CANRA definitions are each precise, specifically enumerated, and evolved over time by numerous amendments to the code. The attempt to bootstrap all post-1974 incidents subject to reporting to pre-1975 definitions is without foundation. Further, the practice of drafting in all future amendments to prior law is contrary to the Commission staff's reliance on the "plain meaning" of the statutes when other forms of analysis fail, that is, if the new definitions are essentially the same, why would the Legislature make dozens of amendments to the old definitions? The "plain meaning" of the amendments over time is to add or change definitions.

2. Training activities (Section 11165.7)

The DSA (18) concludes that training mandated reporters is not required and not reimbursable, but to the contrary concludes that informing the Department of Education when training is not provided is required and reimbursable. The DSA (18) cites *City of San Jose* for the proposition that Section 11165.7 (b), which states "training in the duties imposed by this article shall include . . . ," is somehow "plainly discretionary." The requirement to train staff derives from the same form of legislative imperative ("shall") as subdivision (c), which states that "districts which do not train the employees . . . shall report . . . the reasons training is not provided." Construing subdivision (b) as plainly discretionary, but subdivision (c) as not, is incongruous. Nor can it be concluded that since reporting on the failure to train is mandated, that training is then discretionary. Both training and reporting are required as mutually exclusively parts of Section 11165.7.

3. Assisting in investigations (Section 11165.14 and 11174.3).

The DSA (20) concludes that the "plain language" of Section 11165.14 "does not require any unique activities of school district personnel." The Section requires local child protective agency personnel to investigate complaints filed by parents against a school employee or other person who commits child abuse at a schoolsite. Nearly every school district employee is a mandated reporter of child abuse and subject to criminal punishment for failure to comply in this duty. Therefore, the district and its employees are practically compelled to participate in the investigation.

Section 11174.3 allows the alleged student victim of child abuse to select a school staff member to be present at interviews for the personal comfort of the student. The DSA (21) concludes that since the staff member may decline the request, the activity is not mandated and not reimbursable. The DSA ignores that the district incurs costs for this new activity as a result of two independent choices which are not controlled by the school employer, but by the persons making the choice. Thus, if a student requests (first independent choice) a district employee to participate and the district employee consents (second independent choice), costs are incurred by the district (and not the persons who made the choices).

4. Employee certifications (Section 11166.5)

Section 11166.5 requires, as a prerequisite to employment, that mandated reporters enumerated by the statute sign a statement on a form provided by the employer acknowledging the employee's duties under CANRA. This DSA (24) concludes that this mandate applies "generally to all residents and entities in the state." It does not. The Section applies to mandated reporters of child abuse. The statutory enumeration of mandated reporters is nearly all government employees, and the absolute number of persons who are mandated reporters would probably be government employees as a super majority. However, the DSA concludes that mandated reporters are "elevators" which are ubiquitous in their public location and purpose. The mandated reporting system is the basis of a distinctly governmental and penal system of investigation of child abuse, which is not within in the purview of private persons or entities.

This Section also specifically enumerates a new class of reporters, "child care custodians," to specifically include private and public school personnel. The fact that private school teachers are included does not make this a law of general application since this issue was decided in the *Long Beach* voluntary integration case.

CERTIFICATION

I hereby declare, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own knowledge or information or belief.

Keith Petersen, President
SixTen and Associates

C: Commission mailing list last updated 10/16/07

DECLARATION OF SERVICE

Re: 01-TC-21 San Bernardino CCD
Chapter 226, Statutes of 1975, et al
Child Abuse and Neglect Reporting

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimants. I am 18 years of age or older and not a party to the entitled matter. My business address is 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.

On the date indicated below, I served the attached letter dated November 7, 2007, to Paula Higashi, Executive Director, Commission on State Mandates, to the Commission mailing list updated 10/16/07 for this test claim, and to:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 7, 2007, at Sacramento, California.

Jason R. Cale

Original List Date: 7/3/2002
ast Updated: 10/16/2007
List Print Date: 10/17/2007
Claim Number: 01-TC-21
Issue: Child Abuse and Neglect Reporting

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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EXHIBIT H

November 20, 2007

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Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See enclosed mailing list)

Re: Final Staff Analysis, Proposed Statement of Decision and Hearing Date
Child Abuse and Neglect Reporting; 01-TC-21
Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.14, 11166, 11166.5, 11168, 11174.3, Including Former Penal Code Sections 11161.5, 11161.6, 11161.7
Statutes 2001, Chapter 754 et al. (AB 1697)
San Bernardino Community College District, Claimant

Dear Mr. Petersen:

The final staff analysis and proposed Statement of Decision for this test claim are complete and enclosed for your review.

Hearing

The test claim and proposed Statement of Decision are set for hearing on **Thursday, December 6, 2007, at 9:30 a.m.** in Room 126, State Capitol, Sacramento, CA. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Katherine Tokarski at (916) 323-3562 with any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosures

J:mandates/2001/tc/01tc21/correspondence/fsatrans

ITEM 5

TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.14, 11166, 11166.5, 11168, and 11174.3, Including Former Penal Code Sections 11161.5, 11161.6, 11161.7

Statutes 1975, Chapter 226
Statutes 1976, Chapters 242 and 1139
Statutes 1977, Chapter 958
Statutes 1978, Chapter 136
Statutes 1979, Chapter 373
Statutes 1980, Chapters 855, 1071 and 1117
Statutes 1981, Chapters 29 and 435
Statutes 1982, Chapter 905
Statutes 1984, Chapters 1170, 1391, 1423, 1613, and 1718
Statutes 1985, Chapters 189, 464, 1068, 1420, 1528, 1572 and 1598
Statutes 1986, Chapters 248 and 1289
Statutes 1987, Chapters 640, 1020, 1418, 1444 and 1459
Statutes 1988, Chapters 39, 269 and 1580
Statutes 1990, Chapters 931 and 1603
Statutes 1991, Chapters 132 and 1102
Statutes 1992, Chapter 459
Statutes 1993, Chapters 346, 510 and 1253
Statutes 1994, Chapter 1263
Statutes 1996, Chapters 1080, 1081 and 1090
Statutes 1997, Chapters 83 and 134
Statutes 1998, Chapter 311
Statutes 2000, Chapters 287 and 916
Statutes 2001, Chapters 133 and 754

Child Abuse and Neglect Reporting
(01-TC-21)

San Bernardino Community College District, Claimant

EXECUTIVE SUMMARY

Background

San Bernardino Community College District filed a test claim on June 28, 2002, alleging that amendments to child abuse reporting statutes since January 1, 1975, have resulted in reimbursable increased costs mandated by the state. A declaration of costs incurred was also submitted by the San Jose Unified School District. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. Claimant alleges that all of these changes have imposed a reimbursable state-mandated program on school districts.

The Department of Finance and the Department of Social Services (DSS) both oppose the test claim, largely on procedural grounds. DSS also challenges the claim on several substantive points, particularly arguing that many of the provisions claimed do not in fact mandate that new duties be performed by school districts.

Staff finds that while many of the test claim statutes do not impose mandatory new duties on school districts, there are some new activities alleged that are not required by prior law, thus mandating a new program or higher level of service, as described below.

Conclusion

Staff concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities for K-12 school districts:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

  > The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)

Staff concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

STAFF ANALYSIS

Claimant

San Bernardino Community College District

Chronology

06/28/02	Claimant files the test claim with the Commission on State Mandates (Commission)
07/08/02	Commission staff issues the completeness review letter and requests comments from state agencies
08/02/02	Department of Finance (DOF) requests an extension of time for filing comments for 120 days, to consult with the Office of the Attorney General
08/05/02	Commission staff grants a 90-day extension to November 5, 2002
08/08/02	Department of Social Services (DSS) requests an extension of time to November 26, 2002
08/12/02	Commission staff grants the extension of time as requested
10/21/02	DOF files letter confirming that they also have an extension of time to file comments until November 26, 2002
11/25/02	DSS files comments on the test claim
11/26/02	DOF files comments on the test claim
12/26/02	Claimant files rebuttal to comments by DOF
12/31/02	Commission staff issues a request to the claimant for a response to the state agency comments
01/17/03	Claimant submits response to the Commission's request, responding to the DSS comments and referring to earlier response to DOF's comments
09/12/07	Commission staff requests comments from the California Community Colleges
10/17/07	Commission staff issues the draft staff analysis on the test claim
11/08/07	Claimant files comments on the draft staff analysis

Background

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program on schools districts. A separate test claim, *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*, 00-TC-22), was filed by the County of Los Angeles on many of the same statutes, regarding the activities alleged to be required of law enforcement, county welfare, and related departments. San Bernardino Community College District filed interested party comments on the draft staff analysis for the *ICAN* test claim, 00-TC-22, on September 7, 2007, requesting that the findings for that test claim apply to "all police departments and law enforcement agencies," including school district and community college district police departments. The two test claims present a number of separate issues of law and fact and were not consolidated.

A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and substantively amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or "CANRA."

The Court in *Stecks v. Young* (1995) 38 Cal.App.4th 365, 370-371, provides an overview of the Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq.:

> For more than 30 years, California has used mandatory reporting obligations as a way to identify and protect child abuse victims. In 1963, the Legislature passed former section 11161.5, its first attempt at imposing upon physicians and surgeons the obligation to report suspected child abuse. Although this initial version and later ones carried the risk of criminal sanctions for noncompliance, the state Department of Justice estimated in November 1978 that only about 10 percent of all cases of child abuse were being reported. (*Krikorian v. Barry* (1987) 196 Cal.App.3d 1211, 1216-1217 [242 Cal.Rptr. 312].)
>
> Faced with this reality and a growing population of abused children, in 1980 the Legislature enacted the Child Abuse Reporting Law (§ 11165 et seq.), a comprehensive scheme of reporting requirements "aimed at increasing the likelihood that child abuse victims are identified." (*James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 254 [21 Cal.Rptr.2d 169], citing *Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 90 [270 Cal.Rptr. 379].) The Legislature subsequently renamed the law the Child Abuse and Neglect Reporting Act (Act) (§ 11164). (Stats. 1987, ch. 1444, § 1.5, p. 5369.)
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> These statutes, all of which reflect the state's compelling interest in preventing child abuse, are premised on the belief that reporting suspected abuse is fundamental to protecting children. The objective has been to identify victims, bring them to the attention of the authorities, and, where warranted, permit intervention. (*James W. v. Superior Court, supra,* 17 Cal.App.4th at pp. 253-254.)

Claimant's Position

San Bernardino Community College District's June 28, 2002[1] test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege new activities for school districts, county offices of education, and community college districts, as follows:[2]

- Mandated reporting of known or suspected child abuse to a police or sheriff's department, or to the county welfare department, as soon as practicable by telephone, and

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[1] The potential reimbursement period begins no earlier than July 1, 2000, based upon the filing date for this test claim. (Gov. Code, § 17557.)

[2] Test Claim Filing, pages 122-124.

in writing within 36 hours. (Pen. Code, §§ 11165.9 and 11166, subd. (a).) "All mandated reporters are further compelled to report incidents of child abuse or neglect by the fact that failure to do so is a misdemeanor, pursuant to Penal Code Section 11166, Subdivision (b)."

- Mandated reports "are required to be made on forms adopted by the Department of Justice" (Pen. Code, § 11168.)
- "To assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." (Pen. Code, § 11165.14.)
- "To notify the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." (Pen. Code, § 11174.3.)
- "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided." (Pen. Code, § 11165.7, subd. (d).)
- "When training their mandated reporters in child abuse or neglect reporting, to supply those trainees with a written copy of their reporting requirements and a written disclosure of their confidentiality rights." (Pen. Code, § 11165.7, subd. (c).)
- "To obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties." (Pen. Code, § 11166.5.)

The filing includes a declaration from the San Bernardino Community College District Chair of Child Development and Family and Consumer Science, and a declaration from the San Jose Unified School District, Director of Student Services, stating that each of the districts have incurred unreimbursed costs for the above activities.

The claimant rebutted the state agency comments on the test claim filing in separate letters dated December 19, 2002 (responding to DOF), and January 17, 2003 (responding to DSS). The claimant filed comments on the draft staff analysis dated November 7, 2007. The claimant's substantive arguments will be addressed in the analysis below.[3]

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[3] In the December 19, 2002 rebuttal, the claimant argues that the state DOF comments are "incompetent" and should be stricken from the record since they do not comply with the Commission's regulations (Cal. Code Regs, tit. 2, § 1183.02, subd. (d).) That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that "DOF's comments do not comply with this essential requirement."

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied upon by staff at the test

Department of Finance Position

In comments filed November 26, 2002, DOF alleges the test claim does not meet basic test claim filing standards, and "requests that the Commission reject the claim for failure to comply with the specificity requirement in 2 CCR section 1183(e)." Further, DOF argues that the claim should be denied, because:

> [T]he District fails to point to any provision of law or regulation that defines a community college district as a mandated reporter within the meaning of Penal Code section 11165.7. While several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.) ...
>
> As a final matter, the Department moves to strike the declaration of ... Director of Student Services at the San Jose Unified School District [because the statements] do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4). The declaration is therefore irrelevant to the mandate claim submitted by the San Bernardino Community College District.

No comments were received on the draft staff analysis.

Department of Social Services Position

DSS's comments on the test claim filing, submitted November 25, 2002, also argue that the test claim as submitted fails "to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by Title 2, California Code of Regulations (CCR), section 1183(e)."

DSS also challenges the claim on several substantive points including: arguing that Penal Code section 11165.14 does not impose a duty on its face to cooperate and assist law enforcement agencies, as pled; and the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim." In addition, DSS asserts that the training of mandated reporters "is optional, and can be avoided if it reports to the State Department of Education why such training was not provided [and] the report can be transmitted orally or electronically, at no or de minimis cost to Claimant."

No comments were received on the draft staff analysis.

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claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The state agency responses contain comments on whether the Commission should approve this test claim and are, therefore, not stricken from the administrative record.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution[4] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[5] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[6] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[7] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[8]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[9] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[10] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[11]

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[4] Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[5] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[6] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[7] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[8] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar)*.

[9] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[12]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[13] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[14]

Issue 1: Does the Commission have jurisdiction over the test claim pleadings and the community college district as a party to the test claim?

(A) Sufficiency of the Test Claim Pleadings

As a preliminary matter, DSS and DOF challenged the sufficiency of the test claim pleadings in comments filed November 25 and 26, 2002, respectively.

Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the claimant is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim. At the time of the test claim filing on June 28, 2002, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:[15]

> All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:
>
> (1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

The regulation also required copies of all "relevant portions of" law and "[t]he specific chapters, articles, sections, or page numbers must be identified," as well as a detailed narrative describing the prior law and the new program or higher level of service alleged. Staff finds that the Commission has jurisdiction over the statutes and code sections listed on the test claim title page and described in the narrative, and each will be analyzed below for the imposition of a reimbursable state mandated program.

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[12] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[13] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[14] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[15] The required contents of a test claim are now codified at Government Code section 17553.

(B) Community College District as a Party to the Test Claim

DOF also raised the issue that the claimant, as a community college district, is not a proper party to the claim because "[w]hile several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.)"

Staff finds that the term "teachers," as used in the Child Abuse and Neglect Reporting Act, is inclusive of community college district teachers. The term is deliberately broad as it is used in the statutory list of mandatory child abuse reporters. That list is currently found at Penal Code section 11165.7, and begins:

> (a) As used in this article, "mandated reporter" is defined as any of the following:
>
> (1) A teacher.
> (2) An instructional aide.
> (3) A teacher's aide or teacher's assistant employed by any public or private school.
> (4) A classified employee of any public school.
> (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school. ...

An Attorney General Opinion (72 Ops.Cal.Atty.Gen. 216 (1989)) analyzed the wording of earlier versions of the statutory scheme to find that a ballet teacher at a post-secondary private school in San Francisco was included in the meaning of the word "teacher," as used in CANRA, when the school admitted students as young as eight years old.[16] The opinion goes into great detail using statutory construction to deduce the legislative meaning of the word "teacher" in this context. Finding that the word "teacher" is now singled out in the statute without any qualification, the opinion reaches the following conclusion:

> Without intending to suggest that the meaning of the word "teacher" as found in the Act is without bounds and mandates a reporting duty on any person who happens to impart some knowledge or skill to a child, we do not accept the proffered limitation that it applies only to teachers in K-12 schools. We find nothing in the statutory language of the Child Abuse and Neglect Reporting Act to support such a limitation on the plain meaning of the word "teacher".
>
> ¶ ... ¶
>
> The Child Abuse and Neglect Reporting Act imposes a duty on "teachers" to report instances of child abuse that they come to know about or suspect in the course of their professional contact in order that child protective agencies might take appropriate action to protect the children. We are constrained to interpret the

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[16] "An opinion of the Attorney General "is not a mere 'advisory' opinion, but a statement which, although not binding on the judiciary, must be 'regarded as having a quasi judicial character and [is] entitled to great respect,' and given great weight by the courts." (*Community Redevelopment Agency of City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 727.)

> language of the Act according to the ordinary meaning of its terms to effect that purpose. Doing so, we conclude that a person who teaches ballet at a private ballet school is a "teacher" and thus a "child care custodian" as defined by the Act, and therefore has a mandatory duty to report instances of child abuse under it.

The term "teacher" is applied to community college instructors elsewhere in the Penal Code, and in case law.[17] CANRA is aimed at the protection of individuals under the age of 18 from child abuse and neglect;[18] therefore it is significant that community colleges are required to serve some students under 18 years old. Education Code section 76000 provides that "a community college district shall admit to the community college any California resident ... possessing a high school diploma or the equivalent thereof." Education Code section 48412 requires that the proficiency exams be offered to any students "16 years of age or older," who has or will have completed 10th grade, and "shall award a "certificate of proficiency" to persons who demonstrate that proficiency. The certificate shall be equivalent to a high school diploma." Thus 16 and 17 year olds can be regular students at community colleges.

Therefore, staff finds that the Commission has jurisdiction to decide a test claim filed by a community college district, as some of the claimed activities apply to employers of mandated reporters, including teachers. However, the issue of community college districts being "school districts" within the meaning of CANRA is more complex, and will be analyzed as the term appears in the test claim statutes below.

Issue 2: Do the test claim statutes mandate a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by school districts.[19] Thus, in order for a test claim statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that school districts perform an activity or task.

The test claim allegations will be analyzed by areas of activities, as follows: (a) mandated reporting of child abuse and neglect; (b) training mandated reporters; (c) investigation of suspected child abuse involving a school site or a school employee; (d) employee records. The prior law in each area will be identified.

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[17] For examples, see Penal Code section 291.5 and *Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d 82.

[18] Penal Code sections 11164 and 11165.

[19] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

(A) Mandated Reporting of Child Abuse and Neglect

Penal Code Section 11164:

The test claim pleadings include Penal Code section 11164.[20] Subdivision (a) states that the title of the article is the "Child Abuse and Neglect Reporting Act," and subdivision (b) provides that "[t]he intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."

In *Jacqueline T. v. Alameda County Child Protective Services* (2007) 155 Cal.App.4th 456, 470, the court examined Penal Code section 11164 and found "the statute imposed no mandatory duty on County or Employees. Rather, the statute merely stated the Legislature's "intent and purpose" in enacting CANRA, an article composed of over 30 separate statutes." In reaching this conclusion, the court relied on reasoning from *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639 [*Terrell R.*]:

> An enactment creates a mandatory duty if it requires a public agency to take a particular action. (*Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.) An enactment does not create a mandatory duty if it merely recites legislative goals and policies that must be implemented through a public agency's exercise of discretion. (*Ibid.*) The use of the word "shall" in an enactment does not necessarily create a mandatory duty. (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 910-911, fn. 6 [136 Cal.Rptr. 251, 559 P.2d 606]; *Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.)

Staff also finds this statement of law persuasive, and the *Jacqueline T.* court's legal finding on the nature of section 11164 as merely an expression of legislative intent is directly on point with the case at hand. Therefore, staff finds that Penal Code section 11164 does not mandate a new program or higher level of service on school districts.

Penal Code Sections 11165.9, 11166, and 11168, Including Former Penal Code Section 11161.7:

Penal Code section 11166,[21] subdivision (a), as pled, provides that "a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the

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[20] Added by Statutes 1987, chapter 1459; amended by Statutes 2000, chapter 916.

[21] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

incident." Penal Code section 11165.9 requires reports be made "to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department." Penal Code section 11168[22] (derived from former Pen. Code, § 11161.7)[23] requires the written reports to be made on forms "adopted by the Department of Justice."

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes 1974, chapter 348, required specified medical professionals, public and private school officials and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

> (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department;[24] or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

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[22] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

[23] Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

[24] Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

The list of "mandated reporters," as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,[25] includes all of the original reporters and now also includes teacher's aides, other classified school employees, as well as numerous other public and private employees and professionals.

Staff finds that the duties alleged are not required of school districts, but of mandated reporters as individual citizens. The statutory scheme requires duties of individuals, identified by either their profession or their employer, but the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources. Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:[26]

> Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

Failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated reporter to criminal liability. This criminal penalty applies to mandated reporters as individuals and does not extend to their employers. In addition, under Penal Code section 11172, mandated reporters are granted immunity as individuals for any reports they make: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and *this immunity shall apply even if* the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect *outside of his or her professional capacity or outside the scope of his or her employment*." [Emphasis added.] Therefore, staff finds that the duties are required of mandated reporters as individuals, and there is no new program or higher level of service imposed on school districts for the activities required of mandated reporters.

The draft staff analysis discussed the fact that article XIII B, section 6 does not require reimbursement for "[l]egislation defining a new crime or changing an existing definition of a crime."[27] In comments dated November 7, 2007, the claimant states that the analysis:

> has misconstrued the constitutional exception and has also ignored Government Code Section 17556, subdivision (g), which excludes reimbursement "only for that portion of the statute relating directly to the enforcement of the crime or infraction." The test claim alleges reimbursable activities for the mandated reporters to report observed child abuse and neglect. The reporting is compelled both by affirmative law (Section 11165.1) and by penal coercion (Section 11166). The test claim does not allege mandated costs to enforce the crime of failure to report which would be excluded by subdivision (g).

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[25] Added by Statutes 2000, chapter 916.

[26] This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

[27] California Constitution, article XIII B, section 6, subdivision (a)(2).

The pertinent portion of Government Code section 17556 follows:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following: ¶...¶
>
> (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

The Government Code section 17556, subdivision (g) "crimes exception" to finding costs mandated by the state only applies after finding that a new program or higher level of service has been imposed. Here, staff finds that the duties alleged are required of mandated reporters as individual citizens, and no new program or higher level of service has been imposed directly on school districts. Therefore, staff finds that Penal Code sections 11165.9, 11166, and 11168, (including former Penal Code section 11161.7), do not mandate a new program or higher level of service on school districts for activities required of mandated reporters.

Definitions: Penal Code Sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program.

Penal Code section 11165.6,[28] as pled, defines child abuse as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1[29]), neglect (§ 11165.2[30]), willful cruelty or unjustifiable punishment (§ 11165.3[31]), unlawful corporal punishment or injury (§ 11165.4[32]), and abuse or neglect in out-of-home care (§ 11165.5[33]). The test claim also alleges the statute defining the term child (§ 11165[34]).

While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with any of the other test claim statutes, they mandate a new program or higher level of service by increasing the scope of required activities within the child abuse and neglect reporting program.

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[28] As repealed and reenacted by Statutes 2000, chapter 916.

[29] Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287; derived from former Penal Code section 11165 and 11165.3.

[30] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

[31] Added by Statutes 1987, chapter 1459.

[32] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

[33] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

[34] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

Penal Code section 11165 defines the word child as "a person under the age of 18 years." This is consistent with prior law, which has defined child as "a person under the age of 18 years" since the child abuse reporting law was reenacted by Statutes 1980, chapter 1071. Prior to that time, mandated reporting laws used the term minor rather than child. Minor was not defined in the Penal Code, but rather during the applicable time the definition was found in the Civil Code, as "an individual who is under 18 years of age."[35] Thus no substantive changes have occurred whenever the word child has been substituted for the word minor.

Former Penal Code section 11161.5 mandated child abuse reporting when "the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor." The prior law of Penal Code section 273a[36] follows:

> (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.
>
> (2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

Staff finds that the definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

Staff finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled. Claimant's

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[35] Former Civil Code section 25; reenacted as Family Code section 6500 (Stats. 199, ch. 162, operative Jan. 1, 1994.)

[36] Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the criminal penalties amended by Statutes 1976, chapter 1139, Statutes 1980, chapter 1117, Statutes 1984, chapter 1423, Statutes 1993, chapter 1253, Statutes 1994, chapter 1263, Statutes 1996, chapter 1090, and Statutes 1997, chapter 134, as pled, but the description of the basic crime of child abuse and neglect remains good law.

November 7, 2007 comments dispute this and state: "To the contrary, the new CANRA definitions are each precise, specifically enumerated, and evolved over time by numerous amendments to the code." Staff agrees, but this does not mean that the amended definitions have created a higher level of service over the previous definitions of reportable child abuse and neglect. In *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, the Court stated a fundamental rule of statutory construction: "'Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " [Citation omitted.] That purpose is not necessarily to change the law. 'While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.'" Staff finds that the same acts of abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law.

Penal Code section 11165.1 provides that sexual abuse, for purposes of child abuse reporting, includes sexual assault or sexual exploitation, which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and "obscene sexual conduct." Prior law required reporting of sexual molestation, as well as "unjustifiable physical pain or mental suffering."

Sexual molestation is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone "who annoys or *molests* any child under the age of 18." In a case regularly cited to define "annoy or molest," *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

> The primary purpose of the above statute is the 'protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.' (*People v. Moore*, *supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words 'annoy' and 'molest' are synonymously used (Words and Phrases, perm. ed., vol. 27, 'molest'); they generally refer to conduct designed 'to disturb or irritate, esp. by continued or repeated acts' or 'to offend' (Webster's New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to 'offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.' (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation which is forbidden is 'not concerned with the state of mind of the child' but it is 'the objectionable acts of defendant which constitute the offense,' and if his conduct is 'so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would 'annoy or molest' within the purview of' the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

By use of the general term sexual molestation in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of "offenses against children, [with] a connotation of abnormal sexual motivation." Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that neglect, as used in the Child Abuse and Neglect Reporting Act, includes situations "where any person having care or custody of a child willfully

causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered," "*including* the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care." Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child "in such situation that its person or health may be endangered," as described in prior law, above. Thus the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where "[a]ny person ... willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering." The current definition of willful cruelty or unjustifiable punishment of a child, found at Penal Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.[37]

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits "any cruel or inhuman corporal punishment or injury resulting in a traumatic condition." Again, prior law required reporting of any non-accidental injuries, willful cruelty, and "unjustifiable physical pain or mental suffering," which encompasses all of the factors described in the definition for reportable unlawful corporal punishment or injury. The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines abuse or neglect in out-of-home care as all of the previously described definitions of abuse and neglect, "where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency." Prior law required reporting of abuse by "any person," and neglect by anyone who had a role in the care of the child.[38] Thus any abuse reportable under section 11165.5 would have been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to abuse or neglect in out-of-home care from the general definition of child abuse and neglect at Penal Code section 11165.6. Therefore, staff finds that Penal Code sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service on school districts by increasing the scope of child abuse and neglect reporting.

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[37] Penal Code section 273a distinguishes between those "circumstances or conditions likely to produce great bodily harm or death" (felony), and those that are not (misdemeanor).

[38] *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: "No special meaning attaches to this language [care or custody] "beyond the plain meaning of the terms themselves. The terms 'care or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)"

(B) Training Mandated Reporters:

Penal Code Section 11165.7:

The claimant is also requesting reimbursement for training mandated reporters based on Penal Code section 11165.7.[39] Penal Code section 11165.7, subdivision (a), now includes the complete list of professions that are considered mandated reporters of child abuse and neglect; subdivision (b), as pled, provides that volunteers who work with children "are encouraged to obtain training in the identification and reporting of child abuse." The code section continues, as amended by Statutes 2001, chapter 754:

> (c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
>
> (d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.
>
> (e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

Specifically, claimant alleges a reimbursable state mandate for school districts: "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided."[40] In comments on the draft staff analysis, dated November 7, 2007, the claimant states: "The requirement to train staff derives from the same form of legislative imperative ("shall") as subdivision (c), which states that "districts which do not train the employees ... shall report ... the reasons training is not provided." ... Both training and reporting are required as mutually exclusive parts of Section 11165.7."

DSS argues there is no express duty in the test claim statute for school districts, as employers or otherwise, to provide training to mandated reporters. On page 3 of the November 25, 2002 comments, DSS states:

> Claimant also asserts that Penal Code Section 11165.7 imposes mandated reporter training. (See Test Claim, page 123 lines 16-23) However, Claimant conceded that the training is optional, and can be avoided if it reports to the State Department of Education why such training was not provided. The form of the report is not specified in law. Therefore, the report can be transmitted orally or electronically, at no or de minimis cost to Claimant. Moreover, Claimant has not

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[39] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754.

[40] Test Claim Filing, page 123.

provided any facts to support its view that activities associated with such a report are in excess of that which was required under law in 1975.

Some history of Penal Code section 11165.7 is helpful to put the training language into legislative context. This section was substantively amended by Statutes 2000, chapter 916; prior to that amendment, subdivision (a) did not provide the complete list of mandated reporters, but instead defined the term "child care custodian" for the purposes of the Child Abuse and Neglect Reporting Act. The definition provided that a "child care custodian" included "an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; [and] a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education." All other categories of "child care custodian" defined in former Penal Code section 11165.7, including teachers, child care providers, social workers, and many others, were not dependent on whether the individual had received training on being a mandated reporter. Following the definition of "child care custodian," the prior law of section 11165.7 continued:

> (b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
>
> (c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.
>
> (d) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

Thus, public and private school teacher's aides, and classified employees of public schools, were only "child care custodians," and by extension, mandated reporters, *if* they received training in child abuse identification and reporting. However, even under prior law, employers were not legally required to provide such training.

In *City of San Jose v. State of California,* the court clearly found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[41] The court concluded "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[42] No mandatory language is used to require employers to provide mandated reporter training. Therefore, based on the plain language of the

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[41] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

[42] *Id.* at page 1817.

statute,[43] staff finds that Penal Code section 11165.7, as pled,[44] does not mandate a new program or higher level of service upon school districts for providing training to mandated reporter employees.

However, if mandated reporter training is not provided, the code section requires that school districts "shall report to the State Department of Education the reasons why." DSS argues that the reporting should be de minimis, and therefore not reimbursable. Staff finds that mandates law does not support this conclusion. The concept of a de minimis activity does appear in mandates case law – most recently in the California Supreme Court opinion on *San Diego Unified School Dist.*, which described a de minimis standard as it applied in a situation where there was an existing federal law program on due process procedures, but the state then added more, by "articulat[ing] specific procedures, not expressly set forth in federal law."[45] The Court found that "challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimis—should be treated as part and parcel of the federal mandate." The Court recognized that it was unrealistic to expect the Commission to determine which statutory procedures were required for minimum federal standards of due process, versus any "excess" due-process standards only required by the state.

The Court did not come up with a dollar amount as a threshold for determining de minimis additions to an existing non-reimbursable program, nor any other clear standard; simply finding that the costs and activities must be de minimis, "in context." The context described by the Court in *San Diego* does not have a parallel here. The activity of reporting to the State Department of Education on the lack of training is a new activity, severable and distinct from any other part of the Child Abuse and Neglect Reporting Act, and is not implementing a larger, non-reimbursable program.

In addition, Government Code section 17564 provides the minimum amount that must be claimed in either a test claim or claim for reimbursement. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim. A declaration of costs incurred

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[43] "'[W]hen interpreting a statute we must discover the intent of the Legislature to give effect to its purpose, being careful to give the statute's words their plain, commonsense meaning.'" [Citation omitted.] *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261.

[44] Statutes 2004, chapter 842 amended subdivision (c), regarding training for mandated reporters. Current law now provides "(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5."

Staff notes that "strongly encouraged" is not mandatory language, but an expression of legislative intent (see *Terrell R., supra,* 102 Cal.App.4th 627, 639.) Also, an amendment may be "'the result of a legislative attempt to clarify the true meaning of the statute.'" *Williams v. Garcetti, supra,* 5 Cal.4th 561, 568.

[45] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 888.

was also submitted by the San Jose Unified School District.[46] Therefore, the test claim satisfies the initial burden of demonstrating that school districts have incurred the minimum increased costs for the test claim statute. Staff notes that Government Code section 17564 now requires that any reimbursement claims submitted must exceed $1000, and this will apply for any future reimbursement claims filed pursuant to this test claim.

Finally, there must be a determination of what is meant by "school districts" in the context of Penal Code section 11165.7 – did the Legislature intend that community college districts be included in this requirement? "School district" is not defined in this code section or elsewhere in CANRA, nor is there a general definition to be used in the Penal Code as a whole. Rules of statutory construction demand that we first look to the words in context to determine the meaning.[47]

The report is required to be made to the State Department of Education, which generally controls elementary and secondary education. The State Department of Education is governed by the Board of Education. Education Code section 33031 provides: "The board shall adopt rules and regulations not inconsistent with the laws of this state (a) for its own government, (b) for the government of its appointees and employees, (c) for the government of the day and evening elementary schools, the day and evening secondary schools, and the technical and vocational schools of the state, and (d) for the government of other schools, *excepting* the University of California, the California State University, and *the California Community Colleges*, as may receive in whole or in part financial support from the state."

A community college district generally provides post-secondary education, and the controlling state organization is the California Community Colleges Board of Governors.[48] Particularly since the reorganization of the Education Code by Statutes 1976, chapter 1010, there are growing statutory distinctions between K-12 "school districts" and "community college districts" throughout the code, including the Penal Code.[49] While these factors alone are not controlling, the fact that the training reporting requirement is limited to "school districts" and not all public and private schools, or even all employers of mandated reporters, is indication that the legislative intent was limited, and that school districts should be interpreted narrowly. Therefore, staff finds that the term "school districts" refers to K-12 school districts and is exclusive of community college districts in this case.

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[46] Test Claim Filing, exhibit 1.

[47] "Statutory language is not considered in isolation. Rather, we 'instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.'" *Bonnell v. Medical Bd. of California, supra,* 31 Cal.4th 1255, 1261.

[48] Education Code section 70900 et seq.

[49] Penal Code section 291, 291.1 and 291.5 set up separate statutes for law enforcement informing public schools, private schools, and community college districts, respectively when a teacher, instructor or other employees are arrested for sex offenses.

Thus, staff finds that Penal Code section 11165.7, subdivision (d), mandates a new program or higher level of service on K-12 school districts, as follows:

- Report to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws.

(C) Investigation of Suspected Child Abuse Involving a School Site or a School Employee

Penal Code Sections 11165.14 and 11174.3:

Penal Code section 11165.14,[50] addresses the duty of law enforcement to "investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite."

The test claim alleges that Penal Code section 11165.14 mandates school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site."[51]

DSS argues Penal Code section 11165.14 does not impose a duty on its face for school districts to cooperate with and assist law enforcement agencies.

In comments dated November 7, 2007, the claimant further argues: "Nearly every school district employee is a mandated reporter of child abuse and subject to criminal punishment for failure to comply in this duty. Therefore, the district and its employees are practically compelled to participate in the investigation."

Staff finds that the plain language of Penal Code section 11165.14 does not require school district personnel to engage in the activities of assisting and cooperating with investigation of complaints as alleged by the claimant. Further, there is no evidence in the record that section 11165.14 "practically compels" the participation of a school district or its employees in a child abuse investigation, in a manner that results in a reimbursable state mandated program. The imposition of a reimbursable state mandate through "practical compulsion" is not described in the California Constitution or in statute. The California Supreme Court discussed the issue most recently in *Kern High School Dist., supra,* 30 Cal.4th 727, 731, stating:

> Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion-for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program-claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of

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[50] Added by Statutes 1991, chapter 1102, and amended by Statutes 2000, chapter 916.

[51] Test Claim Filing, page 123.

various funded programs "too good to refuse"-even though, as a condition of program participation, they have been forced to incur some costs.

Here, there is no substantial penalty or loss of funding at issue, and no alternative legal rationale is apparent to explain why there is "practical compulsion" to engage in the test claim activities alleged to be required by section 11165.14. The duties of individual mandated reporters are described in section 11166, not section 11165.14, and while this may be augmented by an underlying civic duty to cooperate with a law enforcement investigation,[52] there is no investigatory duty imposed by statute on the mandated reporter. The Crime and Violence Prevention Center of the California Attorney General's Office issues a publication called "Child Abuse: Educator's Responsibilities," which is designed to "assist educators in determining their reporting responsibilities."[53] In the 6th edition, revised January 2007, at page 13, the document states:

> [S]chool personnel who are mandated to report known or reasonably suspected instances of child abuse play a critical role in the early detection of child abuse. Symptoms or signs of abuse are often first seen by school personnel. Because immediate investigation by a law enforcement agency, or welfare department may save a child from repeated abuse, school personnel should not hesitate to report suspicious injuries or behavior. **Your duty is to report, not investigate.** [Emphasis in original.]

Based upon all of the above, staff finds neither legal nor practical compulsion has been imposed by Penal Code section 11165.14 for school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." Therefore, staff finds that Penal Code section 11165.14 does not impose a new program or higher level of service on school districts.

Claimant further alleges a reimbursable state mandate is imposed by Penal Code section 11174.3;[54] the code section, as pled, follows:

> (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during

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[52] *People v. McKinnon* (1972) 7 Cal.3d 899, 915, at footnote 6, the Court noted: "As concluded by the President's Commission on Law Enforcement and Administration of Justice: "That every American should cooperate fully with officers of justice is obvious ... [T]he complexity and anonymity of modern urban life, the existence of professional police forces and other institutions whose official duty it is to deal with crime, must not disguise the need - far greater today than in the village societies of the past - for citizens to report all crimes or suspicious incidents immediately; to cooperate with police investigations of crime; in short, to 'get involved.'" (The Challenge of Crime in a Free Society, Report by the President's Commission on Law Enforcement and Administration of Justice (1967) p. 288.)"

[53] <http://safestate.org/documents/CA_Child_Abuse_Ed_Respon_2007_ADA.pdf> as of November 15, 2007.

[54] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916.

school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

Claimant alleges that the mandated activities include notifying "the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." DSS argues that the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim."

As discussed above, the court in *City of San Jose, supra,* found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[55] Penal Code section 11174.3 states: "A staff member selected by a child may decline the request to be present at the interview." Thus, staff finds that the optional nature of a school staff member's attendance at the investigative interview does not impose a reimbursable state-mandated program on school districts. The claimant's November 7, 2007 comments argue:

> The DSA ignores that the district incurs costs for this new activity as a result of two independent choices which are not controlled by the school employer, but by the persons making the choice. Thus, if a student requests (first independent

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[55] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

choice) a district employee to participate and the district employee consents (second independent choice), costs are incurred by the district (and not the persons who made the choices).

Accepting this as true, there is still no evidence of either a higher level of service or actual increased costs mandated by the state in order for a school staff member to attend the child abuse investigation interview. Penal Code section 11174.3 states if the district employee opts "to be present at the interview," the interview "*shall be held at a time during school hours when it does not involve an expense to the school.*" Thus, the interview is required to be held during a time, such as the staff member's break or lunch period, where substitute personnel are not required. In *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1285, the court found: "The presence of these references to reimbursement for lost revenue in article XIII supports a conclusion that by using the word "cost" in section 6 the voters meant the common meaning of cost as *an expenditure or expense actually incurred.*"

However, staff does identify that there is a new activity plainly required by the test claim statute for a school representative to inform the selected member of the staff of the requirements of Penal Code section 11174.3 prior to the interview. In order to identify the eligible claimants for this activity, there must be a determination of whether there was legislative intent that the terms "school" or "school districts," as used in this code section includes community colleges. In *Delaney v. Baker* (1999) 20 Cal.4th 23, 41-42, the Court found:

> It is, of course, "generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute." (*People v. Dillon* (1983) 34 Cal.3d 441, 468 [194 Cal.Rptr. 390, 668 P.2d 697].) But that presumption is rebuttable if there are contrary indications of legislative intent.

Staff is unable to find any indications of legislative intent to indicate that community college districts were intended to be included in the use of the terms "school" or "school district" within Penal Code section 11174.3; therefore the terms are given the same meaning as determined for Penal Code section 11165.7, above, as excluding community college districts.

Therefore, based on the plain language of the statute, staff finds that Penal Code section 11174.3 mandates a new program or higher level of service on K-12 school districts for the following activity:

- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

  > The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member

selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school.

(D) Employee Records

Penal Code Section 11166.5:

Penal Code section 11166.5,[56] subdivision (a), as pled, follows, in pertinent part:

> (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.[57]
>
> ¶...¶
>
> The signed statements shall be retained by the employer or the court [regarding child visitation monitors], as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.
>
> This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

Subdivisions (b) through (d) are specific to the state, or concern court-appointed child visitation monitors, and are not applicable to the test claim allegations.

The claimant alleges that the code section requires school districts "[t]o obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of

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[56] Added by Statutes 1984, chapter 1718, and amended by Statutes 1985, chapters 464 and 1598, Statutes 1986, chapter 248, Statutes 1987, chapter 1459, Statutes 1990, chapter 931, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapter 1081, Statutes 2000, chapter 916, and Statutes 2001, chapter 133 (oper. Jul. 31, 2001.)

[57] The amendment by Statutes 2000, chapter 916 removed a detailed statement of the content Penal Code section 11166 that was to be included in the form provided by the employer – and instead provides more generically that "The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166." Staff finds that the essential content requirements for the form remain the same.

In addition, Statutes 2000, chapter 916 first added the requirement that "The employer shall provide a copy of Sections 11165.7 and 11166 to the employee."

his or her child abuse and neglect reporting requirements and their agreement to perform those duties."

DSS argues that the claimant has not offered "any evidence that it was necessary to modify employment forms or that employment forms were so modified." Staff notes that determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law.[58] A properly filed test claim alleging a new program or higher level of service was mandated by statute(s) or executive order(s), including declarations that the threshold level of costs mandated by the state were imposed pursuant to Government Code sections 17514 and 17564, is generally sufficient for the Commission to reach a legal conclusion on the merits.

Staff finds that the basic requirements of section 11166.5, subdivision (a) were first added to law by Statutes 1984, chapter 1718. The law affects all employers—both public and private—of what are now termed "mandated reporters." Currently, the list of mandated reporters includes a wide variety of professions, designed to encompass nearly anyone who may come into contact with children, or otherwise may have knowledge of suspected child abuse and neglect, through the course of their work. Just a few examples from this list: essentially all medical and counseling professionals, including interns; all clergy and those that keep their records; any licensee, administrator, or employee of a licensed community care or child day care facility; and commercial film and photographic print processors and their employees. Such individuals may be employed by diverse private non-profit or for-profit employers including medical groups, hospitals, churches, synagogues and other places of worship, small in-home daycares as well as large childcare centers, and any retail store with a photo lab.

The California Supreme Court in *County of Los Angeles v. State of California, supra,* found that "new program or higher level of service" addressed "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[59] In *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545-1546, the court applied the reasoning to a claim for mandate reimbursement for elevator safety regulations that applied to all public and private entities.

> County acknowledges the elevator safety regulations apply to all elevators, not just those which are publicly owned. FN4 As these regulations do not impose a "unique requirement" on local governments, they do not meet the second definition of "program" established by *Los Angeles.*
>
> FN4. An affidavit submitted by State in support of its motion for summary judgment established that 92.1 percent of the elevators subject to these regulations are privately owned, while only 7.9 percent are publicly owned or operated.
>
> Nor is the first definition of "program" met. ¶ ...¶ In determining whether these regulations are a program, the critical question is whether the mandated program carries out the governmental function of providing services to the public, not

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[58] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[59] *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56.

whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not "a governmental function of providing services to the public." FN5

FN5. This case is therefore unlike *Lucia Mar, supra,* in which the court found the education of handicapped children to be a governmental function (44 Cal.3d at p. 835, 244 Cal.Rptr. 677, 750 P.2d 318) and *Carmel Valley, supra,* where the court reached a similar conclusion regarding fire protection services. (190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795.)

In this case, the statutory requirements apply equally to public and private employers of any individuals described as mandated reporters within CANRA. The alternative prong of demonstrating that the law carries out the governmental function of providing a service to the public is also not met. In this case, staff finds that informing newly-employed mandated reporters of their legal obligations to report suspected child abuse or neglect is not inherently a *governmental function* of providing service to the public, any more than providing safe elevators.

The claimant, in comments filed November 7, 2007, argues that this is not a law of general application, and "[t]he mandated reporting system is the basis of a distinctly governmental and penal system of investigation of child abuse, which is not within the purview of private persons or entities." While the investigation and prosecution of alleged child abuse and neglect is certainly the role of governmental entities, defined mandated reporters have not been confined to the realm of government. Rather the role has been extended to a vast and diverse group of individuals who, through their work, may encounter suspected child abuse and neglect. Claimant offers no factual evidence to support the proposition that "the absolute number of persons who are mandated reporters would probably be government employees as the super majority."[60] Penal Code section 11166.5 places a duty on all employers of mandated reporters listed in section 11165.7—this duty applies whether the employer is private or public. Therefore, staff finds that Penal Code section 11166.5 does not mandate a new program or higher level of service on school districts.

Issue 3: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564. A declaration of costs incurred was also submitted by the San Jose Unified School District.[61] Government Code section 17556 provides exceptions to finding costs mandated by the state. Staff finds that none have applicability to deny this test claim. Thus, for the activities listed in the conclusion below, staff finds accordingly that the new program or higher level of service also imposes costs mandated

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[60] Claimant Comments, November 7, 2007, page 3.

[61] Test Claim Filing, exhibit 1.

by the state within the meaning of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

CONCLUSION

Staff concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities for K-12 school districts:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)[62]
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

  > The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)[63]

Staff concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

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[62] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.

[63] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

ITEM 6

TEST CLAIM
PROPOSED STATEMENT OF DECISION

Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.14, 11166, 11166.5, 11168, and 11174.3, Including Former Penal Code Sections 11161.5, 11161.6, 11161.7

Statutes 1975, Chapter 226
Statutes 1976, Chapters 242 and 1139
Statutes 1977, Chapter 958
Statutes 1978, Chapter 136
Statutes 1979, Chapter 373
Statutes 1980, Chapters 855, 1071 and 1117
Statutes 1981, Chapters 29 and 435
Statutes 1982, Chapter 905
Statutes 1984, Chapters 1170, 1391, 1423, 1613, and 1718
Statutes 1985, Chapters 189, 464, 1068, 1420, 1528, 1572 and 1598
Statutes 1986, Chapters 248 and 1289
Statutes 1987, Chapters 640, 1020, 1418, 1444 and 1459
Statutes 1988, Chapters 39, 269 and 1580
Statutes 1990, Chapters 931 and 1603
Statutes 1991, Chapters 132 and 1102
Statutes 1992, Chapter 459
Statutes 1993, Chapters 346, 510 and 1253
Statutes 1994, Chapter 1263
Statutes 1996, Chapters 1080, 1081 and 1090
Statutes 1997, Chapters 83 and 134
Statutes 1998, Chapter 311
Statutes 2000, Chapters 287 and 916
Statutes 2001, Chapters 133 and 754

Child Abuse and Neglect Reporting
(01-TC-21)

San Bernardino Community College District, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Child Abuse and Neglect Reporting* test claim.[1]

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[1] California Code of Regulations, title 2, section 1188.1, subdivision (a).

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on item 5 modifies the staff analysis, staff recommends that the motion to adopt the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a Proposed Statement of Decision be continued to the January 31, 2008 Commission hearing.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.14, 11166, 11166.5, 11168, and 11174.3, Including Former Penal Code Sections 11161.5, 11161.6, 11161.7

Statutes 1975, Chapter 226; Statutes 1976, Chapters 242 and 1139; Statutes 1977, Chapter 958; Statutes 1978, Chapter 136; Statutes 1979, Chapter 373; Statutes 1980, Chapters 855, 1071 and 1117; Statutes 1981, Chapters 29 and 435; Statutes 1982, Chapter 905; Statutes 1984, Chapters 1170, 1391, 1423, 1613, and 1718; Statutes 1985, Chapters 189, 464, 1068, 1420, 1528, 1572 and 1598; Statutes 1986, Chapters 248 and 1289; Statutes 1987, Chapters 640, 1020, 1418, 1444 and 1459; Statutes 1988, Chapters 39, 269 and 1580; Statutes 1990, Chapters 931 and 1603; Statutes 1991, Chapters 132 and 1102; Statutes 1992, Chapter 459; Statutes 1993, Chapters 346, 510 and 1253; Statutes 1994, Chapter 1263; Statutes 1996, Chapters 1080, 1081 and 1090; Statutes 1997, Chapters 83 and 134; Statutes 1998, Chapter 311; Statutes 2000, Chapters 287 and 916' Statutes 2001, Chapters 133 and 754

Filed on June 28, 2002,

By San Bernardino Community College District, Claimant.

Case No.: 01-TC-21

Child Abuse and Neglect Reporting

PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Proposed for Adoption on December 6, 2007)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on December 6, 2007. [Witness list will be included in the final Statement of Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis to partially approve this test claim at the hearing by a vote of [vote count will be included in the final Statement of Decision].

Summary of Findings

San Bernardino Community College District filed a test claim on June 28, 2002, alleging that amendments to child abuse reporting statutes since January 1, 1975, have resulted in reimbursable increased costs mandated by the state. A declaration of costs incurred was also submitted by the San Jose Unified School District. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. Claimant alleges that all of these changes have imposed a reimbursable state-mandated program on school districts.

The Department of Finance and the Department of Social Services (DSS) both oppose the test claim, largely on procedural grounds. DSS also challenges the claim on several substantive points, particularly arguing that many of the provisions claimed do not in fact mandate that new duties be performed by school districts.

The Commission finds that while many of the test claim statutes do not impose mandatory new duties on school districts, there are some new activities alleged that are not required by prior law, thus mandating a new program or higher level of service, as described below.

The Commission concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities for K-12 school districts:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held

at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

BACKGROUND

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program on schools districts. A separate test claim, *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*, 00-TC-22), was filed by the County of Los Angeles on many of the same statutes, regarding the activities alleged to be required of law enforcement, county welfare, and related departments. San Bernardino Community College District filed interested party comments on the draft staff analysis for the *ICAN* test claim, 00-TC-22, on September 7, 2007, requesting that the findings for that test claim apply to "all police departments and law enforcement agencies," including school district and community college district police departments. The two test claims present a number of separate issues of law and fact and were not consolidated.

A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and substantively amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or "CANRA."

The Court in *Stecks v. Young* (1995) 38 Cal.App.4th 365, 370-371, provides an overview of the Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq.:

> For more than 30 years, California has used mandatory reporting obligations as a way to identify and protect child abuse victims. In 1963, the Legislature passed former section 11161.5, its first attempt at imposing upon physicians and surgeons the obligation to report suspected child abuse. Although this initial version and later ones carried the risk of criminal sanctions for noncompliance, the state Department of Justice estimated in November 1978 that only about 10 percent of all cases of child abuse were being reported. (*Krikorian v. Barry* (1987) 196 Cal.App.3d 1211, 1216-1217 [242 Cal.Rptr. 312].)
>
> Faced with this reality and a growing population of abused children, in 1980 the Legislature enacted the Child Abuse Reporting Law (§ 11165 et seq.), a comprehensive scheme of reporting requirements "aimed at increasing the likelihood that child abuse victims are identified." (*James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 254 [21 Cal.Rptr.2d 169], citing *Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 90 [270 Cal.Rptr. 379].) The Legislature subsequently renamed the law the Child Abuse and Neglect Reporting Act (Act) (§ 11164). (Stats. 1987, ch. 1444, § 1.5, p. 5369.)
>
> These statutes, all of which reflect the state's compelling interest in preventing child abuse, are premised on the belief that reporting suspected abuse is

fundamental to protecting children. The objective has been to identify victims, bring them to the attention of the authorities, and, where warranted, permit intervention. (*James W. v. Superior Court, supra,* 17 Cal.App.4th at pp. 253-254.)

Claimant's Position

San Bernardino Community College District's June 28, 2002[2] test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege new activities for school districts, county offices of education, and community college districts, as follows:[3]

- Mandated reporting of known or suspected child abuse to a police or sheriff's department, or to the county welfare department, as soon as practicable by telephone, and in writing within 36 hours. (Pen. Code, §§ 11165.9 and 11166, subd. (a).) "All mandated reporters are further compelled to report incidents of child abuse or neglect by the fact that failure to do so is a misdemeanor, pursuant to Penal Code Section 11166, Subdivision (b)."
- Mandated reports "are required to be made on forms adopted by the Department of Justice" (Pen. Code, § 11168.)
- "To assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." (Pen. Code, § 11165.14.)
- "To notify the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." (Pen. Code, § 11174.3.)
- "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided." (Pen. Code, § 11165.7, subd. (d).)
- "When training their mandated reporters in child abuse or neglect reporting, to supply those trainees with a written copy of their reporting requirements and a written disclosure of their confidentiality rights." (Pen. Code, § 11165.7, subd. (c).)
- "To obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties." (Pen. Code, § 11166.5.)

The filing includes a declaration from the San Bernardino Community College District Chair of Child Development and Family and Consumer Science, and a declaration from the San Jose Unified School District, Director of Student Services, stating that each of the districts have incurred unreimbursed costs for the above activities.

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[2] The potential reimbursement period begins no earlier than July 1, 2000, based upon the filing date for this test claim. (Gov. Code, § 17557.)

[3] Test Claim Filing, pages 122-124.

The claimant rebutted the state agency comments on the test claim filing in separate letters dated December 19, 2002 (responding to DOF), and January 17, 2003 (responding to DSS). The claimant filed comments on the draft staff analysis dated November 7, 2007. The claimant's substantive arguments will be addressed in the analysis below.[4]

Department of Finance Position

In comments filed November 26, 2002, DOF alleges the test claim does not meet basic test claim filing standards, and "requests that the Commission reject the claim for failure to comply with the specificity requirement in 2 CCR section 1183(e)." Further, DOF argues that the claim should be denied, because:

> [T]he District fails to point to any provision of law or regulation that defines a community college district as a mandated reporter within the meaning of Penal Code section 11165.7. While several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.) ...
>
> As a final matter, the Department moves to strike the declaration of ... Director of Student Services at the San Jose Unified School District [because the statements] do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4). The declaration is therefore irrelevant to the mandate claim submitted by the San Bernardino Community College District.

No comments were received on the draft staff analysis.

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[4] In the December 19, 2002 rebuttal, the claimant argues that the state DOF comments are "incompetent" and should be stricken from the record since they do not comply with the Commission's regulations (Cal. Code Regs, tit. 2, § 1183.02, subd. (d).) That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that "DOF's comments do not comply with this essential requirement."

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied upon by the Commission at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The state agency responses contain comments on whether the Commission should approve this test claim and are, therefore, not stricken from the administrative record.

Department of Social Services Position

DSS's comments on the test claim filing, submitted November 25, 2002, also argue that the test claim as submitted fails "to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by Title 2, California Code of Regulations (CCR), section 1183(e)."

DSS also challenges the claim on several substantive points including: arguing that Penal Code section 11165.14 does not impose a duty on its face to cooperate and assist law enforcement agencies, as pled; and the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim." In addition, DSS asserts that the training of mandated reporters "is optional, and can be avoided if it reports to the State Department of Education why such training was not provided [and] the report can be transmitted orally or electronically, at no or de minimis cost to Claimant."

No comments were received on the draft staff analysis.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[5] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[6] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[7] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[8] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[9]

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[5] Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[6] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[7] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[8] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[9] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, *(San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar)*.

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[10] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[11] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[12]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[13]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[14] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[15]

Issue 1: What is the scope of the Commission's jurisdiction on this test claim and is a community college district an eligible test claimant under the test claim statutes?

(A) What is the scope of the Commission's jurisdiction on this test claim?

As a preliminary matter, DSS and DOF challenged the sufficiency of the test claim pleadings in comments filed November 25 and 26, 2002, respectively.

Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the claimant is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim. At

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[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[12] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[13] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[14] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[15] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the time of the test claim filing on June 28, 2002, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:[16]

> All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:
>
> (1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

The regulation also required copies of all "relevant portions of" law and "[t]he specific chapters, articles, sections, or page numbers must be identified," as well as a detailed narrative describing the prior law and the new program or higher level of service alleged. The Commission has jurisdiction over the statutes and code sections listed on the test claim title page and described in the narrative, and each will be analyzed below for the imposition of a reimbursable state mandated program.

(B) Is a community college district an eligible test claimant under the test claim statutes?

DOF also raised the issue that the claimant, as a community college district, is not a proper party to the claim because "[w]hile several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.)"

The Commission finds that the term "teachers," as used in the Child Abuse and Neglect Reporting Act, is inclusive of community college district teachers. The term is deliberately broad as it is used in the statutory list of mandatory child abuse reporters. That list is currently found at Penal Code section 11165.7, and begins:

> (a) As used in this article, "mandated reporter" is defined as any of the following:
>
> (1) A teacher.
> (2) An instructional aide.
> (3) A teacher's aide or teacher's assistant employed by any public or private school.
> (4) A classified employee of any public school.
> (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school. ...

An Attorney General Opinion (72 Ops.Cal.Atty.Gen. 216 (1989)) analyzed the wording of earlier versions of the statutory scheme to find that a ballet teacher at a post-secondary private school in San Francisco was included in the meaning of the word "teacher," as used in CANRA, when the school admitted students as young as eight years old.[17] The opinion goes into great detail using

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[16] The required contents of a test claim are now codified at Government Code section 17553.

[17] "An opinion of the Attorney General "is not a mere 'advisory' opinion, but a statement which, although not binding on the judiciary, must be 'regarded as having a quasi judicial character and [is] entitled to great respect,' and given great weight by the courts." (*Community Redevelopment Agency of City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 727.)

statutory construction to deduce the legislative meaning of the word "teacher" in this context. Finding that the word "teacher" is now singled out in the statute without any qualification, the opinion reaches the following conclusion:

> Without intending to suggest that the meaning of the word "teacher" as found in the Act is without bounds and mandates a reporting duty on any person who happens to impart some knowledge or skill to a child, we do not accept the proffered limitation that it applies only to teachers in K-12 schools. We find nothing in the statutory language of the Child Abuse and Neglect Reporting Act to support such a limitation on the plain meaning of the word "teacher".
>
> ¶ ... ¶
>
> The Child Abuse and Neglect Reporting Act imposes a duty on "teachers" to report instances of child abuse that they come to know about or suspect in the course of their professional contact in order that child protective agencies might take appropriate action to protect the children. We are constrained to interpret the language of the Act according to the ordinary meaning of its terms to effect that purpose. Doing so, we conclude that a person who teaches ballet at a private ballet school is a "teacher" and thus a "child care custodian" as defined by the Act, and therefore has a mandatory duty to report instances of child abuse under it.

The term "teacher" is applied to community college instructors elsewhere in the Penal Code, and in case law.[18] CANRA is aimed at the protection of individuals under the age of 18 from child abuse and neglect;[19] therefore it is significant that community colleges are required to serve some students under 18 years old. Education Code section 76000 provides that "a community college district shall admit to the community college any California resident ... possessing a high school diploma or the equivalent thereof." Education Code section 48412 requires that the proficiency exams be offered to any students "16 years of age or older," who has or will have completed 10th grade, and "shall award a "certificate of proficiency" to persons who demonstrate that proficiency. The certificate shall be equivalent to a high school diploma." Thus 16 and 17 year olds can be regular students at community colleges.

Therefore, the Commission finds that a community college district is an eligible test claimant under the test claim statutes, as some of the claimed activities apply to employers of mandated reporters, including teachers. However, the issue of community college districts being "school districts" within the meaning of CANRA is more complex, and will be analyzed as the term appears in the test claim statutes below.

Issue 2: Do the test claim statutes mandate a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not

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[18] For examples, see Penal Code section 291.5 and *Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d 82.

[19] Penal Code sections 11164 and 11165.

previously required, or when legislation requires that costs previously borne by the state are now to be paid by school districts.[20] Thus, in order for a test claim statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that school districts perform an activity or task.

The test claim allegations will be analyzed by areas of activities, as follows: (a) mandated reporting of child abuse and neglect; (b) training mandated reporters; (c) investigation of suspected child abuse involving a school site or a school employee; (d) employee records. The prior law in each area will be identified.

(A) Mandated Reporting of Child Abuse and Neglect

Penal Code Section 11164:

The test claim pleadings include Penal Code section 11164.[21] Subdivision (a) states that the title of the article is the "Child Abuse and Neglect Reporting Act," and subdivision (b) provides that "[t]he intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."

In *Jacqueline T. v. Alameda County Child Protective Services* (2007) 155 Cal.App.4th 456, 470, the court examined Penal Code section 11164 and found "the statute imposed no mandatory duty on County or Employees. Rather, the statute merely stated the Legislature's "intent and purpose" in enacting CANRA, an article composed of over 30 separate statutes." In reaching this conclusion, the court relied on reasoning from *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639 [*Terrell R.*]:

> An enactment creates a mandatory duty if it requires a public agency to take a particular action. (*Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.) An enactment does not create a mandatory duty if it merely recites legislative goals and policies that must be implemented through a public agency's exercise of discretion. (*Ibid.*) The use of the word "shall" in an enactment does not necessarily create a mandatory duty. (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 910-911, fn. 6 [136 Cal.Rptr. 251, 559 P.2d 606]; *Wilson v. County of San Diego, supra,* 91 Cal.App.4th at p. 980.)

The Commission also finds this statement of law persuasive, and the *Jacqueline T.* court's legal finding on the nature of section 11164 as merely an expression of legislative intent is directly on point with the case at hand. Therefore, the Commission finds that Penal Code section 11164 does not mandate a new program or higher level of service on school districts.

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[20] *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

[21] Added by Statutes 1987, chapter 1459; amended by Statutes 2000, chapter 916.

Penal Code Sections 11165.9, 11166, and 11168, Including Former Penal Code Section 11161.7:

Penal Code section 11166,[22] subdivision (a), as pled, provides that "a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." Penal Code section 11165.9 requires reports be made "to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department." Penal Code section 11168[23] (derived from former Pen. Code, § 11161.7)[24] requires the written reports to be made on forms "adopted by the Department of Justice."

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes 1974, chapter 348, required specified medical professionals, public and private school officials and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

> (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of

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[22] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[23] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

[24] Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

> any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department;[25] or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

The list of "mandated reporters," as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,[26] includes all of the original reporters and now also includes teacher's aides, other classified school employees, as well as numerous other public and private employees and professionals.

The Commission finds that the duties alleged are not required of school districts, but of mandated reporters as individual citizens. The statutory scheme requires duties of individuals, identified by either their profession or their employer, but the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources. Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:[27]

> Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

Failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated reporter to criminal liability. This criminal penalty applies to mandated reporters as individuals and does not extend to their employers. In addition, under Penal Code section 11172, mandated reporters are granted immunity as individuals for any reports they make: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and *this immunity shall apply even if* the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect *outside of his or her professional capacity or outside the scope of his or her employment.*" [Emphasis added.] Therefore, the Commission finds that the

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[25] Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

[26] Added by Statutes 2000, chapter 916.

[27] This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

duties are required of mandated reporters as individuals, and there is no new program or higher level of service imposed on school districts for the activities required of mandated reporters.

The draft staff analysis discussed the fact that article XIII B, section 6 does not require reimbursement for "[l]egislation defining a new crime or changing an existing definition of a crime."[28] In comments dated November 7, 2007, the claimant states that the analysis:

> has misconstrued the constitutional exception and has also ignored Government Code Section 17556, subdivision (g), which excludes reimbursement "only for that portion of the statute relating directly to the enforcement of the crime or infraction." The test claim alleges reimbursable activities for the mandated reporters to report observed child abuse and neglect. The reporting is compelled both by affirmative law (Section 11165.1) and by penal coercion (Section 11166). The test claim does not allege mandated costs to enforce the crime of failure to report which would be excluded by subdivision (g).

The pertinent portion of Government Code section 17556 follows:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following: ¶...¶
>
> (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

The Government Code section 17556, subdivision (g) "crimes exception" to finding costs mandated by the state only applies after finding that a new program or higher level of service has been imposed. Here, the Commission finds that the duties alleged are required of mandated reporters as individual citizens, and no new program or higher level of service has been imposed directly on school districts. Therefore, the Commission finds that Penal Code sections 11165.9, 11166, and 11168, (including former Penal Code section 11161.7), do not mandate a new program or higher level of service on school districts for activities required of mandated reporters.

Definitions: Penal Code Sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program.

Penal Code section 11165.6,[29] as pled, defines child abuse as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1[30]), neglect (§ 11165.2[31]), willful cruelty or unjustifiable punishment (§ 11165.3[32]),

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[28] California Constitution, article XIII B, section 6, subdivision (a)(2).

[29] As repealed and reenacted by Statutes 2000, chapter 916.

[30] Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287; derived from former Penal Code section 11165 and 11165.3.

unlawful corporal punishment or injury (§ 11165.4[33]), and abuse or neglect in out-of-home care (§ 11165.5[34]). The test claim also alleges the statute defining the term child (§ 11165[35]).

While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with any of the other test claim statutes, they mandate a new program or higher level of service by increasing the scope of required activities within the child abuse and neglect reporting program.

Penal Code section 11165 defines the word child as "a person under the age of 18 years." This is consistent with prior law, which has defined child as "a person under the age of 18 years" since the child abuse reporting law was reenacted by Statutes 1980, chapter 1071. Prior to that time, mandated reporting laws used the term minor rather than child. Minor was not defined in the Penal Code, but rather during the applicable time the definition was found in the Civil Code, as "an individual who is under 18 years of age."[36] Thus no substantive changes have occurred whenever the word child has been substituted for the word minor.

Former Penal Code section 11161.5 mandated child abuse reporting when "the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor." The prior law of Penal Code section 273a[37] follows:

> (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in

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[31] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

[32] Added by Statutes 1987, chapter 1459.

[33] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

[34] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

[35] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

[36] Former Civil Code section 25; reenacted as Family Code section 6500 (Stats. 199, ch. 162, operative Jan. 1, 1994.)

[37] Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the criminal penalties amended by Statutes 1976, chapter 1139, Statutes 1980, chapter 1117, Statutes 1984, chapter 1423, Statutes 1993, chapter 1253, Statutes 1994, chapter 1263, Statutes 1996, chapter 1090, and Statutes 1997, chapter 134, as pled, but the description of the basic crime of child abuse and neglect remains good law.

the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

The Commission finds that the definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

The Commission finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled. Claimant's November 7, 2007 comments dispute this and state: "To the contrary, the new CANRA definitions are each precise, specifically enumerated, and evolved over time by numerous amendments to the code." The Commission agrees, but this does not mean that the amended definitions have created a higher level of service over the previous definitions of reportable child abuse and neglect. In *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, the Court stated a fundamental rule of statutory construction: "'Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " [Citation omitted.] That purpose is not necessarily to change the law. 'While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.'" The Commission finds that the same acts of abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law.

Penal Code section 11165.1 provides that sexual abuse, for purposes of child abuse reporting, includes sexual assault or sexual exploitation, which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and "obscene sexual conduct." Prior law required reporting of sexual molestation, as well as "unjustifiable physical pain or mental suffering."

Sexual molestation is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone "who annoys or *molests* any child under the age of 18." In a case regularly cited to define "annoy or molest," *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

> The primary purpose of the above statute is the 'protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.' (*People v. Moore*, *supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words 'annoy' and 'molest' are synonymously used (Words and Phrases, perm. ed., vol. 27, 'molest'); they generally refer to conduct designed 'to disturb or irritate, esp.

> by continued or repeated acts' or 'to offend' (Webster's New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to 'offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.' (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation which is forbidden is 'not concerned with the state of mind of the child' but it is 'the objectionable acts of defendant which constitute the offense,' and if his conduct is 'so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would 'annoy or molest' within the purview of' the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

By use of the general term sexual molestation in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of "offenses against children, [with] a connotation of abnormal sexual motivation." Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that neglect, as used in the Child Abuse and Neglect Reporting Act, includes situations "where any person having care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered," "*including* the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care." Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child "in such situation that its person or health may be endangered," as described in prior law, above. Thus the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where "[a]ny person ... willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering." The current definition of willful cruelty or unjustifiable punishment of a child, found at Penal Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.[38]

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits "any cruel or inhuman corporal punishment or injury resulting in a traumatic condition." Again, prior law required reporting of any non-accidental injuries, willful cruelty, and "unjustifiable physical pain or mental suffering," which encompasses all of the factors described in the definition for reportable unlawful corporal punishment or injury. The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines abuse or neglect in out-of-home care as all of the previously described definitions of abuse and neglect, "where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency." Prior law required reporting of abuse by "any person," and neglect by anyone who had a role in the care of

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[38] Penal Code section 273a distinguishes between those "circumstances or conditions likely to produce great bodily harm or death" (felony), and those that are not (misdemeanor).

the child.[39] Thus any abuse reportable under section 11165.5 would have been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to abuse or neglect in out-of-home care from the general definition of child abuse and neglect at Penal Code section 11165.6. Therefore, the Commission finds that Penal Code sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service on school districts by increasing the scope of child abuse and neglect reporting.

(B) Training Mandated Reporters:

Penal Code Section 11165.7:

The claimant is also requesting reimbursement for training mandated reporters based on Penal Code section 11165.7.[40] Penal Code section 11165.7, subdivision (a), now includes the complete list of professions that are considered mandated reporters of child abuse and neglect; subdivision (b), as pled, provides that volunteers who work with children "are encouraged to obtain training in the identification and reporting of child abuse." The code section continues, as amended by Statutes 2001, chapter 754:

> (c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
>
> (d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.
>
> (e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

Specifically, claimant alleges a reimbursable state mandate for school districts: "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided."[41] In comments on the draft staff analysis, dated November 7, 2007, the claimant states: "The requirement to train staff derives from the same form of legislative imperative ("shall") as subdivision (c), which states that "districts which do not train the employees … shall

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[39] *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: "No special meaning attaches to this language [care or custody] "beyond the plain meaning of the terms themselves. The terms 'care or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)"

[40] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754.

[41] Test Claim Filing, page 123.

report ... the reasons training is not provided." ... Both training and reporting are required as mutually exclusive parts of Section 11165.7."

DSS argues there is no express duty in the test claim statute for school districts, as employers or otherwise, to provide training to mandated reporters. On page 3 of the November 25, 2002 comments, DSS states:

> Claimant also asserts that Penal Code Section 11165.7 imposes mandated reporter training. (See Test Claim, page 123 lines 16-23) However, Claimant conceded that the training is optional, and can be avoided if it reports to the State Department of Education why such training was not provided. The form of the report is not specified in law. Therefore, the report can be transmitted orally or electronically, at no or de minimis cost to Claimant. Moreover, Claimant has not provided any facts to support its view that activities associated with such a report are in excess of that which was required under law in 1975.

Some history of Penal Code section 11165.7 is helpful to put the training language into legislative context. This section was substantively amended by Statutes 2000, chapter 916; prior to that amendment, subdivision (a) did not provide the complete list of mandated reporters, but instead defined the term "child care custodian" for the purposes of the Child Abuse and Neglect Reporting Act. The definition provided that a "child care custodian" included "an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; [and] a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education." All other categories of "child care custodian" defined in former Penal Code section 11165.7, including teachers, child care providers, social workers, and many others, were not dependent on whether the individual had received training on being a mandated reporter. Following the definition of "child care custodian," the prior law of section 11165.7 continued:

> (b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
>
> (c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.
>
> (d) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

Thus, public and private school teacher's aides, and classified employees of public schools, were only "child care custodians," and by extension, mandated reporters, *if* they received training in child abuse identification and reporting. However, even under prior law, employers were not legally required to provide such training.

In *City of San Jose v. State of California,* the court clearly found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[42] The court concluded "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[43] No mandatory language is used to require employers to provide mandated reporter training. Therefore, based on the plain language of the statute,[44] the Commission finds that Penal Code section 11165.7, as pled,[45] does not mandate a new program or higher level of service upon school districts for providing training to mandated reporter employees.

However, if mandated reporter training is not provided, the code section requires that school districts "shall report to the State Department of Education the reasons why." DSS argues that the reporting should be de minimis, and therefore not reimbursable. The Commission finds that mandates law does not support this conclusion. The concept of a de minimis activity does appear in mandates case law – most recently in the California Supreme Court opinion on *San Diego Unified School Dist.*, which described a de minimis standard as it applied in a situation where there was an existing federal law program on due process procedures, but the state then added more, by "articulat[ing] specific procedures, not expressly set forth in federal law."[46] The Court found that "challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimis—should be treated as part and parcel of the federal mandate." The Court recognized that it was unrealistic to expect the Commission to determine which statutory procedures were required for minimum federal standards of due process, versus any "excess" due-process standards only required by the state.

The Court did not come up with a dollar amount as a threshold for determining de minimis additions to an existing non-reimbursable program, nor any other clear standard; simply finding that the costs and activities must be de minimis, "in context." The context described by the Court in *San Diego* does not have a parallel here. The activity of reporting to the State Department of

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[42] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

[43] *Id.* at page 1817.

[44] "'[W]hen interpreting a statute we must discover the intent of the Legislature to give effect to its purpose, being careful to give the statute's words their plain, commonsense meaning.'" [Citation omitted.] *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261.

[45] Statutes 2004, chapter 842 amended subdivision (c), regarding training for mandated reporters. Current law now provides "(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5."

The Commission notes that "strongly encouraged" is not mandatory language, but an expression of legislative intent (see *Terrell R., supra,* 102 Cal.App.4th 627, 639.) Also, an amendment may be "'the result of a legislative attempt to clarify the true meaning of the statute.'" *Williams v. Garcetti, supra,* 5 Cal.4th 561, 568.

[46] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 888.

Education on the lack of training is a new activity, severable and distinct from any other part of the Child Abuse and Neglect Reporting Act, and is not implementing a larger, non-reimbursable program.

In addition, Government Code section 17564 provides the minimum amount that must be claimed in either a test claim or claim for reimbursement. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim. A declaration of costs incurred was also submitted by the San Jose Unified School District.[47] Therefore, the test claim satisfies the initial burden of demonstrating that school districts have incurred the minimum increased costs for the test claim statute. The Commission notes that Government Code section 17564 now requires that any reimbursement claims submitted must exceed $1000, and this will apply for any future reimbursement claims filed pursuant to this test claim.

Finally, there must be a determination of what is meant by "school districts" in the context of this statute – did the Legislature intend that community college districts be included in this requirement? "School district" is not defined in this code section or elsewhere in CANRA, nor is there a general definition to be used in the Penal Code as a whole. Rules of statutory construction demand that we first look to the words in context to determine the meaning.[48]

The report is required to be made to the State Department of Education, which generally controls elementary and secondary education. The State Department of Education is governed by the Board of Education. Education Code section 33031 provides: "The board shall adopt rules and regulations not inconsistent with the laws of this state (a) for its own government, (b) for the government of its appointees and employees, (c) for the government of the day and evening elementary schools, the day and evening secondary schools, and the technical and vocational schools of the state, and (d) for the government of other schools, *excepting* the University of California, the California State University, and *the California Community Colleges*, as may receive in whole or in part financial support from the state."

A community college district generally provides post-secondary education, and the controlling state organization is the California Community Colleges Board of Governors.[49] Particularly since the reorganization of the Education Code by Statutes 1976, chapter 1010, there are growing statutory distinctions between K-12 "school districts" and "community college districts" throughout the code, including the Penal Code.[50] While these factors alone are not controlling, the fact that the training reporting requirement is limited to "school districts" and not all public and private schools, or even all employers of mandated reporters, is indication that the legislative intent was limited, and that school districts should be interpreted narrowly. Therefore, the

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[47] Test Claim Filing, exhibit 1.

[48] "Statutory language is not considered in isolation. Rather, we 'instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.'" *Bonnell v. Medical Bd. of California, supra,* 31 Cal.4th 1255, 1261.

[49] Education Code section 70900 et seq.

[50] Penal Code section 291, 291.1 and 291.5 set up separate statutes for law enforcement informing public schools, private schools, and community college districts, respectively when a teacher, instructor or other employees are arrested for sex offenses.

Commission finds that the term "school districts" refers to K-12 school districts and is exclusive of community college districts in this case.

Thus, the Commission finds that Penal Code section 11165.7, subdivision (d), mandates a new program or higher level of service on K-12 school districts, as follows:

- Report to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws.

(C) Investigation of Suspected Child Abuse Involving a School Site or a School Employee

Penal Code Sections 11165.14 and 11174.3:

Penal Code section 11165.14,[51] addresses the duty of law enforcement to "investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite."

The test claim alleges that Penal Code section 11165.14 mandates school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site."[52]

DSS argues Penal Code section 11165.14 does not impose a duty on its face for school districts to cooperate with and assist law enforcement agencies.

In comments dated November 7, 2007, the claimant further argues: "Nearly every school district employee is a mandated reporter of child abuse and subject to criminal punishment for failure to comply in this duty. Therefore, the district and its employees are practically compelled to participate in the investigation."

The Commission finds that the plain language of Penal Code section 11165.14 does not require school district personnel to engage in the activities of assisting and cooperating with investigation of complaints as alleged by the claimant. Further, there is no evidence in the record that section 11165.14 "practically compels" the participation of a school district or its employees in a child abuse investigation, in a manner that results in a reimbursable state mandated program. The imposition of a reimbursable state mandate through "practical compulsion" is not described in the California Constitution or in statute. The California Supreme Court discussed the issue most recently in *Kern High School Dist., supra,* 30 Cal.4th 727, 731, stating:

> Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion-for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program-claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case

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[51] Added by Statutes 1991, chapter 1102, and amended by Statutes 2000, chapter 916.

[52] Test Claim Filing, page 123.

> stems only from the circumstance that claimants have found the benefits of various funded programs "too good to refuse"-even though, as a condition of program participation, they have been forced to incur some costs.

Here, there is no substantial penalty or loss of funding at issue, and no alternative legal rationale is apparent to explain why there is "practical compulsion" to engage in the test claim activities alleged to be required by section 11165.14. The duties of individual mandated reporters are described in section 11166, not section 11165.14, and while this may be augmented by an underlying civic duty to cooperate with a law enforcement investigation,[53] there is no investigatory duty imposed by statute on the mandated reporter. The Crime and Violence Prevention Center of the California Attorney General's Office issues a publication called "Child Abuse: Educator's Responsibilities," which is designed to "assist educators in determining their reporting responsibilities."[54] In the 6th edition, revised January 2007, at page 13, the document states:

> [S]chool personnel who are mandated to report known or reasonably suspected instances of child abuse play a critical role in the early detection of child abuse. Symptoms or signs of abuse are often first seen by school personnel. Because immediate investigation by a law enforcement agency, or welfare department may save a child from repeated abuse, school personnel should not hesitate to report suspicious injuries or behavior. **Your duty is to report, not investigate.** [Emphasis in original.]

Based upon all of the above, the Commission finds neither legal nor practical compulsion has been imposed by Penal Code section 11165.14 for school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." Therefore, the Commission finds that Penal Code section 11165.14 does not impose a new program or higher level of service on school districts.

Claimant further alleges a reimbursable state mandate is imposed by Penal Code section 11174.3;[55] the code section, as pled, follows:

> (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it

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[53] *People v. McKinnon* (1972) 7 Cal.3d 899, 915, at footnote 6, the Court noted; "As concluded by the President's Commission on Law Enforcement and Administration of Justice: "That every American should cooperate fully with officers of justice is obvious ... [T]he complexity and anonymity of modern urban life, the existence of professional police forces and other institutions whose official duty it is to deal with crime, must not disguise the need - far greater today than in the village societies of the past - for citizens to report all crimes or suspicious incidents immediately; to cooperate with police investigations of crime; in short, to 'get involved.'" (The Challenge of Crime in a Free Society, Report by the President's Commission on Law Enforcement and Administration of Justice (1967) p. 288.)"

[54] <http://safestate.org/documents/CA_Child_Abuse_Ed_Respon_2007_ADA.pdf> as of November 15, 2007.

[55] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916.

necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

Claimant alleges that the mandated activities include notifying "the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." DSS argues that the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim."

As discussed above, the court in *City of San Jose, supra,* found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[56] Penal Code section 11174.3 states: "A staff member selected by a child may decline the request to be present at the interview." Thus, the Commission finds that the optional nature of a school staff member's attendance at the investigative interview does not impose a reimbursable state-mandated program on school districts. The claimant's November 7, 2007 comments argue:

The DSA ignores that the district incurs costs for this new activity as a result of two independent choices which are not controlled by the school employer, but by

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[56] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

> the persons making the choice. Thus, if a student requests (first independent choice) a district employee to participate and the district employee consents (second independent choice), costs are incurred by the district (and not the persons who made the choices).

Accepting this as true, there is still no evidence of either a higher level of service or actual increased costs mandated by the state in order for a school staff member to attend the child abuse investigation interview. Penal Code section 11174.3 states if the district employee opts "to be present at the interview," the interview "*shall be held at a time during school hours when it does not involve an expense to the school.*" Thus, the interview is required to be held during a time, such as the staff member's break or lunch period, where substitute personnel are not required. In *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1285, the court found: "The presence of these references to reimbursement for lost revenue in article XIII supports a conclusion that by using the word "cost" in section 6 the voters meant the common meaning of cost as *an expenditure or expense actually incurred.*"

However, the Commission does identify that there is a new activity plainly required by the test claim statute for a school representative to inform the selected member of the staff of the requirements of Penal Code section 11174.3 prior to the interview. In order to identify the eligible claimants for this activity, there must be a determination of whether there was legislative intent that the terms "school" or "school districts," as used in this code section includes community colleges. In *Delaney v. Baker* (1999) 20 Cal.4th 23, 41-42, the Court found:

> It is, of course, "generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute." (*People v. Dillon* (1983) 34 Cal.3d 441, 468 [194 Cal.Rptr. 390, 668 P.2d 697].) But that presumption is rebuttable if there are contrary indications of legislative intent.

The Commission is unable to find any indications of legislative intent to indicate that community college districts were intended to be included in the use of the terms "school" or "school district" within Penal Code section 11174.3; therefore the terms are given the same meaning as determined for Penal Code section 11165.7, above, as excluding community college districts.

Therefore, based on the plain language of the statute, the Commission finds that Penal Code section 11174.3 mandates a new program or higher level of service on K-12 school districts for the following activity:

- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

  > The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is

punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school.

(D) Employee Records

Penal Code Section 11166.5:

Penal Code section 11166.5,[57] subdivision (a), as pled, follows, in pertinent part:

> (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.[58]
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> ¶...¶
>
> The signed statements shall be retained by the employer or the court [regarding child visitation monitors], as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.
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> This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

Subdivisions (b) through (d) are specific to the state, or concern court-appointed child visitation monitors, and are not applicable to the test claim allegations.

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[57] Added by Statutes 1984, chapter 1718, and amended by Statutes 1985, chapters 464 and 1598, Statutes 1986, chapter 248, Statutes 1987, chapter 1459, Statutes 1990, chapter 931, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapter 1081, Statutes 2000, chapter 916, and Statutes 2001, chapter 133 (oper. Jul. 31, 2001.)

[58] The amendment by Statutes 2000, chapter 916 removed a detailed statement of the content Penal Code section 11166 that was to be included in the form provided by the employer – and instead provides more generically that "The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166." The Commission finds that the essential content requirements for the form remain the same.

In addition, Statutes 2000, chapter 916 first added the requirement that "The employer shall provide a copy of Sections 11165.7 and 11166 to the employee."

The claimant alleges that the code section requires school districts "[t]o obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties."

DSS argues that the claimant has not offered "any evidence that it was necessary to modify employment forms or that employment forms were so modified." The Commission notes that determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law.[59] A properly filed test claim alleging a new program or higher level of service was mandated by statute(s) or executive order(s), including declarations that the threshold level of costs mandated by the state were imposed pursuant to Government Code sections 17514 and 17564, is generally sufficient for the Commission to reach a legal conclusion on the merits.

The Commission finds that the basic requirements of section 11166.5, subdivision (a) were first added to law by Statutes 1984, chapter 1718. The law affects all employers—both public and private—of what are now termed "mandated reporters." Currently, the list of mandated reporters includes a wide variety of professions, designed to encompass nearly anyone who may come into contact with children, or otherwise may have knowledge of suspected child abuse and neglect, through the course of their work. Just a few examples from this list: essentially all medical and counseling professionals, including interns; all clergy and those that keep their records; any licensee, administrator, or employee of a licensed community care or child day care facility; and commercial film and photographic print processors and their employees. Such individuals may be employed by diverse private non-profit or for-profit employers including medical groups, hospitals, churches, synagogues and other places of worship, small in-home daycares as well as large childcare centers, and any retail store with a photo lab.

The California Supreme Court in *County of Los Angeles v. State of California, supra,* found that "new program or higher level of service" addressed "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[60] In *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545-1546, the court applied the reasoning to a claim for mandate reimbursement for elevator safety regulations that applied to all public and private entities.

> County acknowledges the elevator safety regulations apply to all elevators, not just those which are publicly owned. FN4 As these regulations do not impose a "unique requirement" on local governments, they do not meet the second definition of "program" established by *Los Angeles.*
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> FN4. An affidavit submitted by State in support of its motion for summary judgment established that 92.1 percent of the elevators subject to these regulations are privately owned, while only 7.9 percent are publicly owned or operated.

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[59] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[60] *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56.

> Nor is the first definition of "program" met. ¶ ...¶ In determining whether these regulations are a program, the critical question is whether the mandated program carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not "a governmental function of providing services to the public." FN5
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> FN5. This case is therefore unlike *Lucia Mar, supra,* in which the court found the education of handicapped children to be a governmental function (44 Cal.3d at p. 835, 244 Cal.Rptr. 677, 750 P.2d 318) and *Carmel Valley, supra,* where the court reached a similar conclusion regarding fire protection services. (190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795.)

In this case, the statutory requirements apply equally to public and private employers of any individuals described as mandated reporters within CANRA. The alternative prong of demonstrating that the law carries out the governmental function of providing a service to the public is also not met. In this case, the Commission finds that informing newly-employed mandated reporters of their legal obligations to report suspected child abuse or neglect is not inherently a *governmental function* of providing service to the public, any more than providing safe elevators.

The claimant, in comments filed November 7, 2007, argues that this is not a law of general application, and "[t]he mandated reporting system is the basis of a distinctly governmental and penal system of investigation of child abuse, which is not within the purview of private persons or entities." While the investigation and prosecution of alleged child abuse and neglect is certainly the role of governmental entities, defined mandated reporters have not been confined to the realm of government. Rather the role has been extended to a vast and diverse group of individuals who, through their work, may encounter suspected child abuse and neglect. Claimant offers no factual evidence to support the proposition that "the absolute number of persons who are mandated reporters would probably be government employees as the super majority."[61] Penal Code section 11166.5 places a duty on all employers of mandated reporters listed in section 11165.7—this duty applies whether the employer is private or public. Therefore, the Commission finds that Penal Code section 11166.5 does not mandate a new program or higher level of service on school districts.

Issue 3: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564. A declaration of costs

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[61] Claimant Comments, November 7, 2007, page 3.

incurred was also submitted by the San Jose Unified School District.[62] Government Code section 17556 provides exceptions to finding costs mandated by the state. The Commission finds that none have applicability to deny this test claim. Thus, for the activities listed in the conclusion below, the Commission finds accordingly that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

CONCLUSION

The Commission concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities for K-12 school districts:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)[63]
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)[64]

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[62] Test Claim Filing, exhibit 1.

[63] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.

[64] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916. Reimbursement for this activity begins July 1, 2000, based on the test claim

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

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filing date; the reimbursable activity was not substantively altered by later operative amendments.

Original List Date: 7/3/2002
Last Updated: 10/16/2007
List Print Date: 11/20/2007
Claim Number: 01-TC-21
Issue: Child Abuse and Neglect Reporting

Mailing Information: Final Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT I

LATE FILING

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

December 3, 2007

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has reviewed the final staff analysis prepared by Commission staff for Claim No. CSM-00-TC-22, "Interagency Child Abuse and Neglect (ICAN) Investigation Reports."

As the result of our review, we have concluded that portions of the analysis are related to a pending lawsuit. This letter is to request postponement of the subject test claim hearing scheduled for December 6, 2007, until at least 60 days following final adjudication of the following case: *Department of Finance v. Commission on State Mandates*, California Court of Appeal Case No. C056833 (POBOR).

Final adjudication of the *Department of Finance v. Commission on State Mandates* case is relevant because Commission staff relies on specific definitions for law enforcement agencies and police departments and make recommendations regarding their eligibility as claimants. These issues are currently under review by the appellate court.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your November 21, 2007 letter have been provided with copies of this letter via either United States Mail, fax, or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosure

PROOF OF SERVICE

Test Claim Name: Interagency Child Abuse and Neglect (ICAN) Investigation Reports
Test Claim Number: CSM-00-TC-22

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On December 3, 2007 I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
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Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

A-24
Ms. Mary Ault
Department of Social Services
Children and Family Services Division
744 P St, MS 17-18
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County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Rm 603
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County of San Bernardino
Office of Auditor / Controller / Recorder
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EXHIBIT J

December 5, 2007

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And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Request for Postponement of Hearing and Severance

Items 3, 4, 5, and 6
Interagency Child Abuse and Neglect (ICAN) Investigation Reports, 00-TC-22
Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code Section 11161.7), 11169, and 11170; Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; and Subsequent Statutes Through Statutes 2000, Chapters 287 and 916;
California Code of Regulations, Title 11, Sections 901, 902, and 903;
Department of Justice Forms SS 8572 and SS 8583
County of Los Angeles, Claimant

Dear Ms. Ducay, Mr. Kaye, and Mr. Petersen:

The Commission on State Mandates received Department of Finance's December 3, 2007 request to postpone the hearing on the above-named test claim. The Commission is approving this request to postpone the hearing and determination of *those portions of the analysis* that are related to the adjudication of the following case: *Department of Finance v. Commission on State Mandates*, California Court of Appeal Case No. C056833 (POBOR).

On December 6, 2007, the Commission hearing will be limited to the analysis of the test claim statutes and executive orders for cities and counties.

If the Commission adopts the city/county portion of the final staff analysis, staff will propose that the Commission adopt the proposed statement of decision, as modified by the prior action. If this occurs, a modified statement of decision will be prepared, and a draft will be circulated to the test claimant and DOF before the final adopted statement of decision is issued.

The test claim statutes and executive orders pled by the County of Los Angeles in 00-TC-22, as they may apply to other types of local governmental entities, are hereby severed and consolidated with another pending test claim, *Child Abuse and Neglect Reporting*, 01-TC-21, filed by the San Bernardino Community College District. By this consolidation, the Commission is also postponing the December 6, 2007 hearing on

01-TC-21. The consolidated test claim comprised of 00-TC-22 and 01-TC-21 will be set for hearing within 60 days after the final adjudication of the *Department of Finance v. Commission on State Mandates* case. At that time a new draft staff analysis will be issued for review and comment.

If you object to these proposed changes to the agenda items for the December 6 hearing or have questions, please contact me, at (916) 323-8210.

Sincerely,

PAULA HIGASHI
Executive Director

J:mandates/2000/tc/00tc22/corres/severltr

EXHIBIT K

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code Section 11161.7), 11169, and 11170

Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1991, Chapter 132; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219, 346 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; Statutes 2000, Chapters 287 and 916;

California Code of Regulations, Title 11, Sections 901, 902 and 903; Department of Justice Forms SS 8572 ("Suspected Child Abuse Report") and ; SS 8583 ("Child Abuse Investigation Report");

Filed on June 29, 2001,

By County of Los Angeles, Claimant.

Case No.: 00-TC-22

Interagency Child Abuse and Neglect Investigation Reports

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on December 6, 2007)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on December 6, 2007. Sergeant Dan Scott, of the County of Los Angeles Sheriff's Department, and Leonard Kaye appeared on behalf of the claimant, County of Los Angeles. Susan Geanacou and Carla Castañeda appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the modified staff analysis to partially approve this test claim at the hearing by a vote of 7 to 0.

Summary of Findings

The County of Los Angeles filed a test claim on June 29, 2001, alleging that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or CANRA. As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. The index is now used by government agencies conducting background checks on individuals who will interact with children in employment or volunteer settings.

A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. Claimant alleges that all of these changes have imposed a reimbursable state-mandated program.

Initially, Department of Finance (DOF) and the Department of Social Services (DSS) both opposed the test claim, arguing that the claim alleges duties of law enforcement and child protective services that were required by prior law. Where the state agencies acknowledge that some new duties may have been imposed, they contend that adequate funding has already been provided to counties as part of the joint federal-state-local funding scheme for child welfare. At the test claim hearing on December 6, 2007, DOF stated agreement with the staff analysis.

The Commission finds that the test claim statutes and executive orders have created numerous new local duties for reporting child abuse to the state, as well as record-keeping and notification activities that were not required by prior law, thus mandating a new program or higher level of service.

At this time, there is no evidence in the record to demonstrate that the mandated activities have been offset or funded by the state or federal government in a manner and amount "sufficient to fund the cost of the state mandate." On the contrary, Welfare and Institutions Code section 10101 indicates that "the state's share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program, or the amount appropriated by the Legislature for that purpose, whichever is less." Conversely, counties must have a share of costs for child welfare services of at least 30 percent of the nonfederal expenditures. In addition, there is no evidence that the counties are required to use the funds identified for the costs of mandated activities.

Therefore, the Commission finds that Government Code section 17556, subdivision (e) does not apply to disallow a finding of costs mandated by the state, but that all claims for reimbursement for the approved activities must be offset by any program funds already received from non-local sources.

Conclusion

The Commission concludes that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903, and "Child Abuse Investigation Report" Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

Distributing the Suspected Child Abuse Report Form

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)

Reporting Between Local Departments

Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (h), now subd. (j).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

  This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay." (Pen. Code, § 11166, subd. (h), now subd. (j).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)

<u>Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:</u>

A city or county law enforcement agency shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)

- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (i), now subd. (k).)

Receipt of Cross-Reports by District Attorney's Office:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b). (Pen. Code, § 11166, subds. (h) and (i), now subds. (j) and (k).)

Reporting to Licensing Agencies:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

  As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166.2.)

Additional Cross-Reporting in Cases of Child Death:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)

- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)

Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)
- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)

Notifications Following Reports to the Central Child Abuse Index

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)
- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall

include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).)

Any city or county law enforcement agency, county probation department, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

Record Retention

Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

BACKGROUND

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and substantively amended the law, entitling it the "Child Abuse and Neglect Reporting Act," sometimes referred to as "CANRA."

The court in *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, pages 258-260, provides an overview of the complete Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq. (footnotes omitted):

> The law is designed to bring the child abuser to justice and to protect the innocent and powerless abuse victim. (See Comment, *Reporting Child Abuse: When Moral Obligations Fail* (1983) 15 Pacific L.J. 189.) The reporting law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. (*Id.*, at pp. 189-190.) Physical abuse, sexual abuse, willful cruelty, unlawful corporal punishment and neglect must be reported.
>
> ¶...¶
>
> The reporting law applies to three broadly defined groups of professionals: "health practitioners," child care custodians, and employees of a child protective agency. "Health practitioners" is a broad category subdivided into "medical" and "nonmedical" practitioners, and encompasses a wide variety of healing professionals, including physicians, nurses, and family and child counselors. (§§ 11165, subds. (i), (j); 11165.2.) "Child care custodians" include teachers, day care workers, and a variety of public health and educational professionals. (§§ 11165, subd. (h); 11165.1 [first of two identically numbered sections]; 11165.5.) Employees of "child protective agencies" consist of police and sheriff's officers, welfare department employees and county probation officers. (§ 11165, subd. (k).)
>
> The Legislature acknowledged the need to distinguish between instances of abuse and those of legitimate parental control. "[T]he Legislature recognizes that the reporting of child abuse ... involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child ... . [I]t is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline." (Stats. 1980, ch. 1071, § 5, p. 3425.)
>
> To strike the "delicate balance" between child protection and parental rights, the Legislature relies on the judgment and experience of the trained professional to distinguish between abusive and nonabusive situations. "[A]ny child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment *whom he or*

she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency .... '[R]easonable suspicion' means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, *drawing when appropriate on his or her training and experience*, to suspect child abuse." (§ 11166, subd. (a), italics added.) As one commentator has observed, "[t]he occupational categories ... are presumed to be uniquely qualified to make informed judgments when suspected abuse is not blatant." (See Comment, *Reporting Child Abuse: When Moral Obligations Fail*, *supra.*, 15 Pacific L.J. at p. 214, fn. omitted.)

The mandatory child abuse report must be made to a "child protective agency," i.e., a police or sheriff's department or a county probation or welfare department. The professional must make the report "immediately or as soon as practically possible by telephone." The professional then has 36 hours in which to prepare and transmit to the agency a written report, using a form supplied by the Department of Justice. The telephone and the written reports must include the name of the minor, his or her present location, and the information that led the reporter to suspect child abuse. (§§ 11166, subd. (a); 11167, subd. (a); 11168.) Failure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a $1,000 fine. (§ 11172, subd. (e).)

The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff's department, and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney. (§ 11166, subd. (g).) Initial reports are confidential, but may be disclosed to anyone involved with the current investigation and prosecution of the child abuse claim, including the district attorney who has requested notification of any information relevant to the reported instance of abuse. (§ 11167.5.)

A child protective agency receiving the initial child abuse report then conducts an investigation. The Legislature intends an investigation be conducted on every report received. The investigation should include a determination of the "person or persons apparently responsible for the abuse." (Stats. 1980, ch. 1071, § 5, pp. 3425-3426.) Once the child protective agency conducts an "active investigation" of a report and determines that it is "not unfounded," the agency must forward a written report to the Department of Justice, on forms provided by the department. (§§ 11168, 11169.) An "unfounded" report is one "which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse as defined in Section 11165." (§ 11165.6, subd. (c)(2).)

The Department of Justice retains the reports in a statewide index, a computerized data bank known as the "Child Abuse Central Registry," which is to be continually updated and "shall not contain any reports that are determined to be unfounded." (§ 11170, subd. (a).) If a child protective agency subsequently

determines that a report is "unfounded," it must so inform the Department of Justice who shall remove the report from its files. (§ 11169.)

The reports in the registry are not public documents, but may be released to a number of individuals and government agencies. Principally, the information may be released to an investigator from the child protective agency currently investigating the reported case of actual or suspected abuse or to a district attorney who has requested notification of a suspected child abuse case. Past reports involving the same minor are also disclosable to the child protective agency and the district attorney involved or interested in a current report under investigation. In addition, future reports involving the same minor will cause release of all past reports to the investigating law enforcement agencies. (§§ 11167.5, subd. (b)(1); 11167, subd. (c); 11170, subd. (b)(1).)

As part of the earlier versions of California's mandated reporting laws, a Child Abuse Centralized Index has been operated by the Department of Justice (DOJ) since 1965.[1] In addition, in January 1974, Congress enacted the federal "Child Abuse Prevention and Treatment Act," known as CAPTA (Pub.L. No. 93-247). This established a federal advisory board and grant funding for states with comprehensive child abuse and neglect reporting laws. This law has been continually reenacted and currently provides grant funds to all eligible states and territories for child abuse and neglect reporting, prevention, and treatment programs.[2]

Claimant's Position

The County of Los Angeles's June 29, 2001[3] test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, and related DOJ regulations and forms, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege that the test claim statutes and executive orders imposed new activities on the claimant in the following categories:

1. Program Implementation
2. Initial Case Finding and Reporting
3. Taking and Referring Reports
4. Cross-Reporting and District Attorney Reporting
5. Investigation and File Queries, Maintenance
6. Child Abuse Central Index Reporting
7. Notifications

The filing includes declarations of representatives from the County of Los Angeles Department of Children and Family Services, the District Attorney's Office, and the Sheriff's Department.

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[1] Former Penal Code section 11165.1, as amended by Statutes 1974, chapter 348.

[2] 42 United States Code section 5106a.

[3] The potential reimbursement period begins no earlier than July 1, 1999, based upon the filing date for this test claim. (Gov. Code, § 17557.)

Claimant filed comments on September 7, 2007, expressing agreement with the draft staff analysis findings and conclusions, and attaching exhibits related to the county's implementation of the program.

Department of Finance Position

In comments filed December 10, 2001, DOF alleges the test claim does not meet filing standards, stating that "[t]he claimant has failed to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by [Commission regulations.]"

Addressing the substantive issues raised, DOF argued that no reimbursable state-mandated program has been imposed by any of the test claim statutes or executive orders. DOF asserted that the claim "attempts to characterize as "new duties" many of the long-standing statutory obligations of local law enforcement, probation, and child protective agencies to receive and refer reports concerning allegations of child abuse."

DOF also contended that "[a]rticle XIII B, section 6 requires subvention only when the costs in question can be recovered *solely* from local tax revenues. [footnote (fn): *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.] The Child Welfare Program, of which child protective services are a part, is funded by a combination of federal, state and local funds. [fn: Welfare and Institutions Code § 10101, Exhibit 4, attached.]" DOF argued that because of this joint funding, "the test claim legislation is not subject to state subvention."

On July 20, 2007, DOF filed a response to Commission staff's request for additional information to address the assertion that the test claim activities have been funded. DOF's response included a CD containing pages from the Budget Act regarding Item 5180-151-0001, and DSS County Fiscal Letters, from fiscal year 1999-2000 through 2006-2007. This filing is discussed further at Issue 3 below.

On September 12, 2007, DOF filed comments on the draft staff analysis stating concurrence with the recommendation to partially approve the test claim, but concluding that if the analysis is approved by the Commission, "the claimant's statements that the activities have neither been offset or funded by the state or federal government must be fully substantiated."

Department of Social Services Position

DSS's comments on the test claim filing, submitted December 10, 2001, conclude that for any new activities alleged "no additional reimbursement is warranted. The existing funding scheme adequately reimburses local government for costs associated with the delivery of child welfare services which includes the provision of services and level of services mandated under current law." DSS's comments regarding specific test claim activities will be addressed in the analysis below.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[4] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[5] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[6] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[7] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[8]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[9] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[10] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[11]

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[4] Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[5] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[6] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[7] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[8] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, *(San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar)*.

[9] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[12]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[13] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[14]

Issue 1: What is the scope of the Commission's jurisdiction on this test claim?

DOF challenged the sufficiency of the test claim pleadings in their comments filed December 10, 2001. Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the claimant is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim. At the time of the test claim filing on June 29, 2001, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:[15]

> All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:
>
> (1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

The regulation also required copies of all "relevant portions of" law and "[t]he specific chapters, articles, sections, or page numbers must be identified," as well as a detailed narrative describing the prior law and the new program or higher level of service alleged.

The test claim cover pages list "Penal Code Part 4, Title 1, Chapter 2, Article 2.5: The Child Abuse and Neglect Report Act, as Specified, and as Added or Amended by Chapter 1071, Statutes of 1980 and Subsequent Statutes, Including Penal Code Section 11168, and as Including Former Penal Code Section 11161.7, Amended by Chapter 958, Statutes of 1977." The title pages also include specific references to three regulations and two state forms, pled as executive orders.

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[12] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[13] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[14] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[15] The required contents of a test claim are now codified at Government Code section 17553.

The Commission identifies specific allegations in the test claim narrative or in the claimant's rebuttal comments filed February 15, 2002, regarding Penal Code sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168, 11169, and 11170, as added or amended by Statutes 1980, chapter 1071, through amendments by Statutes 2001, chapter 916. The test claim allegations also include former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958, as it was later incorporated into Penal Code section 11168. The claim alleges reimbursable costs are imposed on the county Department of Children and Family Services, the District Attorney's Office, and the Sheriff's Department. The Commission takes jurisdiction over these statutes and code sections, along with the executive orders pled, and these will be analyzed below for the imposition of a reimbursable state mandated program.

In addition, San Bernardino Community College District filed interested party comments on the draft staff analysis on September 7, 2007, requesting that the test claim findings be made for the legal requirements "for all police departments and law enforcement agencies, and not exclude school district police departments without a compelling reason." On December 5, 2007, a request was received from DOF to postpone the hearing on *ICAN* until a final decision is reached in *Department of Finance v. Commission on State Mandates*, [California Court of Appeal Case No. C056833 (POBOR)]. In order to allow the County of Los Angeles claim to move forward on the December 6, 2007 hearing agenda, the test claim statutes and executive orders pled in 00-TC-22, as they may apply to other types of local governmental entities, were severed and consolidated with another pending test claim, *Child Abuse and Neglect Reporting,* 01-TC-21, filed by the San Bernardino Community College District. Therefore, *this* statement of decision is limited to findings for cities and counties.

Issue 2: Do the test claim statutes and executive orders mandate a new program or higher level of service on cities and counties within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by local government.[16] Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task, or result in "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[17]

The test claim allegations will be analyzed by areas of activities, as follows: (a) mandated reporting of child abuse and neglect (b) distributing the Suspected Child Abuse Report Form; (c) reporting between local departments; (d) investigation of suspected child abuse, and reporting to and from the state Department of Justice; (e) notifications following reports to the Child Abuse Central Index; and (f) record retention. The prior law in each area will be identified.

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[16] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

[17] California Constitution, article XIII B, section 6, subdivision (c).

(A) Mandated Reporting of Child Abuse and Neglect

Penal Code Section 11166, Subdivision (a):

Penal Code section 11166,[18] subdivision (a), as pled, provides that "a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." Penal Code section 11165.9 requires reports be made "to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department."

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes 1974, chapter 348, required specified medical professionals, public and private school officials and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

> (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and

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[18] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

> to the juvenile probation department;[19] or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

The list of "mandated reporters," as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,[20] includes all of the original reporters and now also includes: teacher's aides and other classified school employees; county office of education employees whose employment requires regular child contact; licensing workers; peace officers and other police or sheriff employees; firefighters; therapists; medical examiners; animal control officers; film processors; clergy and others.

The Commission finds that the duties alleged are not required of local entities, but of mandated reporters as individual citizens. The statutory scheme requires duties of individuals, identified by either their profession or their employer, but the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources. Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:[21]

> Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

Failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated reporter to criminal liability. This criminal penalty applies to mandated reporters as individuals and does not extend to their employers. In addition, under Penal Code section 11172, mandated reporters are granted immunity as individuals for any reports they make: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and *this immunity shall apply even if* the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect *outside of his or her professional capacity or outside the scope of his or her employment.*" [Emphasis added.] Therefore, the Commission finds that the duties are required of mandated reporters as individuals, and Penal Code section 11166, subdivision (a), does not mandate a new program or higher level of service on local governments for the activities required of mandated reporters.

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[19] Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

[20] Added by Statutes 2000, chapter 916.

[21] This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

Definitions of Child Abuse and Neglect: Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

Penal Code section 11165.6,[22] as pled, defines "child abuse" as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1[23]), neglect (§ 11165.2[24]), willful cruelty or unjustifiable punishment (§ 11165.3[25]), unlawful corporal punishment or injury (§ 11165.4[26]), and abuse or neglect in out-of-home care (§ 11165.5[27]).

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program. While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with the other test claim statutes, they mandate a new program or higher level of service by increasing the "scope of child abuse and neglect that is initially reported to child protective services,"[28] as suggested by the claimant.

Former Penal Code section 11161.5 mandated child abuse reporting when "the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor." The prior law of Penal Code section 273a[29] follows:

> (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in

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[22] As repealed and reenacted by Statutes 2000, chapter 916.

[23] Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287. Derived from former Penal Code section 11165 and 11165.3.

[24] Added by Statutes 1987, chapter 1459. Derived from former Penal Code section 11165.

[25] Added by Statutes 1987, chapter 1459.

[26] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

[27] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

[28] Test Claim Filing, page 13.

[29] Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the penalties amended, but the description of the basic crime of child abuse and neglect remains good law at Penal Code section 273a.

the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

The Commission finds that the definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

The Commission finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled. Even though the definitions have been rewritten, in *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, the Court stated a fundamental rule of statutory construction: "'Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " [Citation omitted.] That purpose is not necessarily to change the law. 'While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.'" The Commission finds that the same acts of abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law.

Penal Code section 11165.1 provides that "sexual abuse," for purposes of child abuse reporting, includes "sexual assault" or "sexual exploitation," which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and "obscene sexual conduct." Prior law required reporting of "sexual molestation," as well as "unjustifiable physical pain or mental suffering."

"Sexual molestation" is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone "who annoys or *molests* any child under the age of 18." In a case regularly cited to define "annoy or molest," *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

> The primary purpose of the above statute is the 'protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.' (*People v. Moore*, *supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words 'annoy' and 'molest' are synonymously used (Words and Phrases, perm. ed., vol. 27, 'molest'); they generally refer to conduct designed 'to disturb or irritate, esp. by continued or repeated acts' or 'to offend' (Webster's New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to 'offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.' (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation

> which is forbidden is 'not concerned with the state of mind of the child' but it is 'the objectionable acts of defendant which constitute the offense,' and if his conduct is 'so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would 'annoy or molest' within the purview of' the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

By use of the general term "sexual molestation" in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of "offenses against children, [with] a connotation of abnormal sexual motivation." Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that "neglect," as used in the Child Abuse and Neglect Reporting Act, includes situations "where any person having care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered," "*including* the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care." Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child "in such situation that its person or health may be endangered," as described in prior law, above. Thus the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where "[a]ny person ... willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering." The current definition of "willful cruelty or unjustifiable punishment of a child," found at Penal Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.[30]

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits "any cruel or inhuman corporal punishment or injury resulting in a traumatic condition." Again, prior law required reporting of any non-accidental injuries, "willful cruelty," and "unjustifiable physical pain or mental suffering," which encompasses all of the factors described in the definition for reportable "unlawful corporal punishment or injury." The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines "abuse or neglect in out-of-home care" as all of the previously described definitions of abuse and neglect, "where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency." Prior law required reporting of abuse by "any person," and neglect by anyone who had a role in the care of the child.[31] Thus any abuse reportable under section 11165.5, would have

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[30] Penal Code section 273a distinguishes between those "circumstances or conditions likely to produce great bodily harm or death" (felony), and those that are not (misdemeanor).

[31] *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: "No special meaning attaches to this language [care or custody] "beyond the plain meaning of the terms themselves. The terms 'care

been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to "abuse or neglect in out-of-home care" from the general definition of "child abuse and neglect" at Penal Code section 11165.6.

Therefore, the Commission finds that Penal Code sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service by increasing the scope of child abuse and neglect reporting.

Penal Code Section 11165.7:

The claimant also requests reimbursement for training mandated reporters. The test claim filing, at page 43, makes the following allegation (all brackets are in the claimant's original text):

> Mandated reporters [Section 11165.7] report child abuse [as defined in Section 11165.6] that is suspected [Section 11166(a)] and such reporters are required to undergo training in accordance with Section 11165.7 subdivisions (c) and (d):
>
> > "(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
> >
> > (d) School districts that do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided."

Claimant's quote of Penal Code section 11165.7,[32] subdivisions (c) and (d) is accurate, as amended by Statutes 2000, chapter 916. Penal Code section 11165.7, subdivision (a), is the list of professions that are mandated reporters; subdivision (b), as pled, provided that volunteers who work with children "are encouraged to obtain training in the identification and reporting of child abuse."

The specific language regarding training in the test claim statute refers to school districts.[33] A separate test claim was filed for training activities on this same code section by San Bernardino

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or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)"

[32] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, and Statutes 2000, chapter 916.

[33] Although this is addressed in more detail in the 01-TC-21 test claim, some history of Penal Code section 11165.7 is helpful to put the training language into legislative context. Prior to amendment by Statutes 2000, chapter 916, subdivision (a) did not provide the complete list of mandated reporters, but instead defined the term "child care custodian" for the purposes of the Child Abuse and Neglect Reporting Act. The definition provided that a "child care custodian" included "an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district

Community College District on behalf of school districts. This will be heard by the Commission at a separate hearing: *Child Abuse and Neglect Reporting* (01-TC-21). The analysis for Penal Code section 11165.7 in this test claim is limited to cities and counties.

The Commission finds, based on the plain meaning of the statute,[34] that there is no express duty in the test claim statute for local agencies, as employers or otherwise, to provide training to mandated reporters in child abuse identification and reporting. Rather, as described in *Planned Parenthood, supra,* 181 Cal.App.3d 245, 259, at footnote 4: "[t]he Legislature has enacted numerous provisions to ensure these occupational categories [mandated reporters] receive the necessary training in child abuse detection. (See, e.g., Bus. & Prof. Code, §§ 28, 2089, 2091.)" So, while the Business and Professions Code requires that specific professionals, including psychologists, clinical social workers, marriage and family therapists, physicians, and surgeons, receive training on mandated child abuse reporting as part of their initial licensing and continuing education requirements, the training is not required to be provided by local agency employers pursuant to the test claim statutes.[35] Therefore, the Commission finds that Penal Code section 11165.7, subdivisions (c) and (d), does not mandate a new program or higher level of service on local agencies for training mandated reporters.

(B) Distributing the Suspected Child Abuse Report Form:

Penal Code Section 11168, Including Former Penal Code Section 11161.7, and the "Suspected Child Abuse Report" Form SS 8572:

Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

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has so warranted to the State Department of Education; [and] a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education." All other categories of "child care custodian" defined in former Penal Code section 11165.7, including teachers, child care providers, social workers, and many others, were not dependent on whether the individual had received training on being a mandated reporter.

[34] "If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs." (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

[35] The activity of training on the requirements of the Child Abuse and Neglect Reporting Act, is one that, while not explicitly required by the plain language of the statute, may be found to be one "of the most reasonable methods of complying with the mandate" during the parameters and guidelines part of the test claim process. California Code of Regulations, title 2, section 1183.1, subdivision (a)(4), requires the parameters and guidelines to contain a description of the reimbursable activities, including "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

The 1980 reenactment of the child abuse reporting laws moved the provision to Penal Code section 11168,[36] which now requires:

> The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be distributed by the agencies specified in Section 11165.9.

The Commission finds that agencies specified in section 11165.9 did not have a duty to distribute the state-issued "Suspected Child Abuse Report" (Form SS 8572), or any other child abuse reporting form, prior to Statutes 1977, chapter 958. Therefore, the Commission finds that Penal Code section 11168, as pled, mandates a new program or higher level of service, as follows:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters.

(C) Reporting Between Local Departments

Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction: Penal Code Section 11165.9:

Penal Code section 11165.9,[37] as pled, requires:

> Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

As discussed above, the prior law of Penal Code section 11161.5, subdivision (a), required the mandated reporters to report child abuse "by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or in the alternative, either to the county welfare department, or to the county health department."

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[36] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

[37] As added by Statutes 2000, chapter 916. Derived from former Penal Code section 11165.

Thus, police, sheriff's, probation, and county health and welfare departments were required to accept mandated child abuse reports under prior law;[38] however, one aspect of Penal Code section 11165.9 creates a new duty. Now, local police, sheriff's, probation or county welfare departments, *even when they lack jurisdiction* over the reported incident "shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency" unless they take action to immediately transfer the telephone call to the proper agency. Otherwise, they must accept the report, and then forward it "immediately" by telephone, fax or electronic transmission to the proper agency. Prior law placed the burden solely on the mandated reporter to file the report with an agency with proper jurisdiction. With the change made by Statutes 2000, chapter 916, a local police, sheriff's, probation or county welfare department with improper jurisdiction must take affirmative steps to accept and refer a child abuse report, rather than simply telling a caller that they have contacted the wrong department. Therefore, the Commission finds that Penal Code section 11165.9, as added by Statutes 2000, chapter 916, mandates a new program or higher level of service, as follows:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
>
> - Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect.

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:
Penal Code Section 11166, Subdivision (h):[39]

Penal Code section 11166, subdivision (h), as pled, requires reporting from the county probation or welfare departments to the law enforcement agency with jurisdiction, and to the district attorney's office. The law requires county welfare or probation departments to report by telephone, fax or electronic transmission "every known or suspected instance of child abuse or neglect" to the law enforcement agency with jurisdiction, the local agency responsible for investigation of Welfare and Institutions Code section 300 cases (such as a child protective services department), and to the district attorney's office. There is an exception to reporting cases to law enforcement and the district attorney when they only involve general neglect, or an inability to provide "regular care due to the parent's substance abuse." If an initial telephone report is made, a written report by mail, fax or electronic transmission must follow within 36 hours.

Statutes 2000, chapter 916, operative January 1, 2001, modified the reporting requirements by allowing the initial reports to be made by fax or electronic means, rather than initially by telephone. Thus, there is now the option of meeting the mandate requirements in a single step if

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[38] Former Penal Code section 11161.5, subdivision (a).

[39] Subsequent amendments (not pled) re-lettered subdivision (h). The subdivision is now lettered (j). For consistency with the pleadings, the subdivision will be referred to as (h) in the discussion.

the initial report is made by fax or electronic transmission. Statutes 2005, chapter 713, operative January 1, 2006, following the filing of the test claim, made the same change for reports from law enforcement agencies. This statute also re-lettered the subdivisions from (h) to (j).

The prior law of former section 11161.5, subdivision (a), required "cross-reporting" by county welfare or health departments to the local police authority with jurisdiction and juvenile probation departments, as follows:

> Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

Thus, prior law did require county welfare departments to file a report of suspected child abuse or neglect "with the local police authority with jurisdiction," "without delay."[40] However, all of the other local child abuse cross-reporting duties were added by Statutes 1980, chapter 1071, or in later amendments.

The Commission finds that Penal Code section 11166[41] mandates a new program or higher level of service on county probation and welfare departments for the following activities, as of the beginning of the reimbursement period, July 1, 1999:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

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[40] A common definition of the word "immediately," which is used in the current statute, is "without delay," which is used in the prior law. (American Heritage Dict. (4th ed. 2000).)

[41] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

  This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay."

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:
Penal Code Section 11166, Subdivision (i):[42]

Penal Code section 11166, subdivision (i) provides the requirement that law enforcement agencies must relay known or suspected child abuse and neglect reports by telephone to the Welfare and Institutions Code section 300 agency for the county, and to the district attorney's office, with an exception for reporting cases of general neglect to the district attorney. The law enforcement agency must also cross-report to the county welfare department all reports of suspected child abuse or neglect alleged to have occurred as a result of the action of a person responsible for the child's welfare. A written report by mail, fax or electronic transmission must follow any telephone report within 36 hours.

Statutes 2000, chapter 916, operative January 1, 2001, modified the reporting requirements by allowing the initial reports to be made by fax or electronic means, rather than initially by telephone. Thus, there is now the option of meeting the mandate requirements in a single step if the initial report is made by fax or electronic transmission. Statutes 2005, chapter 713, operative

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[42] Subsequent amendments (not pled) re-lettered subdivision (i). The subdivision is now lettered (k). For consistency with the pleadings, the subdivision will be referred to as (i) in the discussion.

January 1, 2006, following the filing of the test claim, made the same change for reports from law enforcement agencies. This statute also re-lettered the subdivisions from (i) to (k).

The Commission finds that Penal Code section 11166, subdivision (i)[43] mandates a new program or higher level of service on city and county law enforcement agencies for the following activities, as of the beginning of the reimbursement period, July 1, 1999:

A city or county law enforcement agency shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department.
- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse.
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

Receipt of Cross-Reports by District Attorney's Office: Penal Code Section 11166, Subdivisions (h) and (i):

The claimant also alleges that Penal Code section 11166, by requiring cross-reporting of suspected child abuse *to* the district attorney, imposes a consequential "duty of the District Attorney to receive, monitor or audit those reports."[44] The activity of "receiving" the suspected child abuse reports on the part of the district attorney is one that is implicit as a reciprocal duty in response to the requirement that law enforcement, probation and county welfare departments provide such reports. Therefore, the Commission finds that Penal Code section 11166 also mandates a new program or higher level of service, as follows:

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[43] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[44] Claimant's February 15, 2002 Comments, page 14.

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b).

The test claim includes a declaration from the Los Angeles County District Attorney's Office, stating that the agency "is required to audit each case so reported and ensure that, pursuant to the test claim legislation, appropriate investigative agency's reports are completed by these agencies." As described by the California Supreme Court in *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451, "[t]he prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek." The test claim statutes have not altered that level of independence, nor has the plain meaning of the test claim statutes required any new duties of the district attorney's office to monitor or audit the reports received. To the extent that such follow-up activities are necessary, they are part of the prosecutor's ordinary, discretionary, duty to determine whom and what to charge, as described in the *Dix* case.

Therefore, the Commission finds that the activities of monitoring and auditing the suspected child abuse reports, as alleged, are not required by the plain meaning of the test claim statutes, and they do not mandate a new program or higher level of service upon the district attorney's office.

Reporting to Licensing Agencies:
Penal Code Section 11166.2:

Penal Code section 11166.2,[45] as pled, "any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone to the appropriate licensing agency" when suspected child abuse or neglect "occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person." In addition, the reporting agency "shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information." Finally, the reporting "agency shall send the licensing agency a copy of its investigation report and any other pertinent materials."

Statutes 2001, chapter 133, operative July 31, 2001, following the filing of the test claim, modified the reporting requirements by allowing agencies to make the initial reports by fax or electronic means, rather than initially by telephone. Thus, reporting agencies now have the option of meeting the mandate requirements in a single step if they make the initial report by fax or electronic transmission.

No cross-reports were required to be made to community care licensing or other licensing agencies under prior law. Therefore, the Commission finds Penal Code section 11166.2 mandates a new program or higher level of service, for the following new activity:

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[45] As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

  As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

Additional Cross-Reporting in Cases of Child Death: Penal Code Section 11166.9, Subdivisions (k) and (l):

Claimant also alleges in comments filed on February 15, 2002, at page 17, that new activities were required when Penal Code section 11166.9 was amended by Statutes 1999, chapter 1012, adding subdivisions (k) and (l).[46] Previously the code section addressed the statewide effort to identify and address issues related to child deaths, but did not require any mandatory activities of local government.

With the amendment by Statutes 1999, chapter 1012, Penal Code section 11166.9, subdivision (k) requires "Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings."

In addition, pursuant to subdivision (l), the county child welfare department must also create a record in a state reporting system regarding the case of a child death. Therefore, the Commission finds that Penal Code section 11166.9, subdivisions (k) and (l), mandates a new program or higher level of service, for the following new activities:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency.

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.

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[46] As added by Statutes 1992, chapter 844 and amended by Statutes 1995, chapter 539; Statutes 1997, chapter 842; Statutes 1999, chapter 1012; Statutes 2000, chapter 916. This code section has since been renumbered Penal Code section 11174.34, by Statutes 2004, chapter 842, without amending the text. For consistency with the pleadings, the section will be referred to as 11166.9 in the discussion.

- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect.
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.

(D) Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice

Penal Code Sections 11165.12, 11166, Subdivision (a), 11169, Subdivision (a), and 11170; and the Automated Child Abuse Reporting System (ACAS): California Code of Regulations, Title 11, Sections 901, 902, and 903; and the "Child Abuse Investigation Report" Form SS 8583:

Penal Code section 11169, subdivision (a),[47] as pled, requires "[a]n agency specified in section 11165.9," to forward a written report to DOJ, by mail, fax or electronic transmission "of every case it investigates of known or suspected child abuse or neglect which is determined not to be unfounded," other than cases of general neglect. The reports are required to be in a form approved by DOJ.

Penal Code section 11165.12[48] provides the definitions of unfounded, substantiated and inconclusive reports. Each requires a determination "by the investigator who conducted the investigation." Unfounded reports -- those which have been found following an active investigation to be false, inherently improbable, the result of an accidental injury, or otherwise not satisfying the statutory definition of child abuse and neglect -- are not to be reported to DOJ. Thus, only substantiated and inconclusive reports are to be forwarded to DOJ, pursuant to section 11169, subdivision (a), as described above.

California Code of Regulations, title 11, section 901, provides definitions for the Automated Child Abuse System, or ACAS. Section 902 states the purpose of ACAS "as the index of investigated reports of suspected child abuse received," and is a reference file "used to refer authorized individuals or entities to the underlying child abuse investigative files maintained at the reporting CPA."[49] The Commission finds that California Code of Regulations, title 11, sections 901 or 902, do not require any activities that are not otherwise described in statute, and thus do not mandate a new program or higher level of service.

Penal Code section 11169, subdivision (a) provides that "[t]he reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission." California Code of Regulations, title 11, section 903, designates the current form SS 8583 as "the standard reporting form for submitting summary reports of child abuse to DOJ,"

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[47] As added by Statutes 1980, chapter 1071 and amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916.

[48] As added by Statutes 1987, chapter 1459 and amended by Statutes 1990, chapter 1330, Statutes 1997, chapter 842, and Statutes 2000, chapter 916.

[49] "CPA" refers to "child protective agency," which is defined in California Code of Regulations, title 11, section 901, subdivision (f), as referring back to the agencies listed in Penal Code section 11165.9.

and describes mandatory information which must be included on the form "in order for it to be considered a "retainable report" by DOJ and entered into ACAS."

The prior law, former Penal Code section 11161.5, subdivision (a), required all written child abuse reports received by the police to be forwarded to the state, as follows:

> Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice.

Thus, prior law only required a local police authority that received a written report of child abuse to forward a copy of the report to the state, as received.

The claimant further alleges that "investigation" is newly required by the test claim statutes and regulations, in order to complete Form SS 8583, pled as an executive order, for submittal to DOJ. The state agencies dispute that investigation is a new activity. DSS, in comments filed December 10, 2001, states: "Department staff believes that the requirement for the county welfare department to conduct an independent investigation in response to allegations of abuse and neglect is not a newly imposed duty." Neither DSS nor DOF's comments cite any provision of law demonstrating that independent investigation of child abuse reports was required by prior law.

Claimant correctly cites the 1999 *Alejo v. City of Alhambra* appellate court decision,[50] in which the court found that the duty to investigate reports of suspected child abuse and neglect is mandatory. The *Alejo* case concerned a claim of "negligence per se" against the city and the individual police officer for failing to investigate a report from a father that his three-year-old son was being physically abused by the mother's live-in boyfriend. The negligence per se doctrine is used to litigate situations where a violation of a statute or regulation ultimately leads to an injury of a type that the law was intended to prevent. In this case, the court found that the police violated a statute that required the investigation of child abuse reports, which led to the three-year-old child being further abused by the mother's boyfriend. First, the court determined that the police have no general duty to investigate individual reports of child abuse or neglect:

> We acknowledge, as a general rule one has no duty to come to the aid of another. (*Williams v. State of California* (1983) 34 Cal.3d 18, 23 [192 Cal.Rptr. 233, 664 P.2d 137].) Accordingly, there is no duty owed by police to individual members of the general public because "[a] law enforcement officer's duty to protect the citizenry is a general duty owed to the public as a whole." (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1121 [222 Cal.Rptr. 239].) Therefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection. (*Id.* at p. 1122.)[51]

Since the court determined that the police have a general duty to protect the public at large, but not a duty to protect specific individuals in the absence of another statute, the opinion then examines whether any specific statute was violated by the police for failing to investigate the

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[50] *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180.

[51] *Id.* at page 1185.

report of child abuse. The court determined that Penal Code section 11166, subdivision (a), "creates such a duty."[52]

> As we read section 11166, subdivision (a), it imposes two mandatory duties on a police officer who receives an account of child abuse.
>
> Although section 11166, subdivision (a) does not use the term "investigate," *it clearly envisions some investigation in order for an officer to determine whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the* county welfare department and the district attorney under section 11166, subdivision (i) and to the *Department of Justice under section 11169, subdivision (a).* The latter statute provides in relevant part: "A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded .... A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12." An "unfounded" report is one "which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse, as defined in Section 11165.6." (§ 11165.12, subd. (a).) "Child abuse" is defined in section 11165.6 as "a physical injury which is inflicted by other than accidental means on a child by another person."
>
> ¶...¶
>
> Contrary to the city's position, the duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse. The language of the statute, prior cases and public policy all support this conclusion.[53]

Thus, the court finds that the test claim statutes do mandate investigation, and the Commission must follow this statement of law when reaching its conclusions in this test claim. However, the court was not examining the law from a mandates perspective, and made the finding based on current law. For its purposes, the court had no need to determine whether the earlier versions of the child abuse reporting law initially created the duty to investigate.

The investigation activity identified in the test claim is one that is necessary in order to complete the state "Child Abuse Investigation Report" Form SS 8583. Penal Code section 11169, subdivision (a), as added by Statutes 1980, chapter 1071, and substantively amended by Statutes 1985, chapter 1598, provides that the "agency specified in Section 11165.9" must first conduct an active investigation to determine whether the child abuse or severe neglect "report is not unfounded" before sending a completed report form to the state.[54] No earlier statutes required any determination of the validity of a report of child abuse or neglect before completing a child

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[52] *Ibid.*

[53] *Id.* at pages 1186-1187. [Emphasis added.]

[54] Penal Code section 11169.

abuse investigative report form and forwarding it to the state. Therefore, the Commission finds that an investigation sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, as defined by Penal Code section 11165.12, is newly mandated by Penal Code section 11169, subdivision (a), as described by the court in *Alejo*.[55]

The Commission finds that Penal Code section 11169, subdivision (a), the California Code of Regulations, title 11, section 903, and the state "Child Abuse Investigation Report" Form SS 8583, mandate a new program or higher level of service, as follows:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
>
> - Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.
> - Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission.

(E) Notifications Following Reports to the Child Abuse Central Index

Penal Code Section 11169, Subdivision (b):

Penal Code section 11169, subdivision (b), as amended by Statutes 2000, chapter 916, for the first time requires that when "an agency specified in section 11165.9," forwards a report of suspected child abuse or neglect to DOJ:

> the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

DSS's December 10, 2001 comments concur with the claimant that written notification is a new activity, but disputes the claim for reimbursement based upon the existing funding scheme. DOF's comments on the test claim filing similarly acknowledge "that this particular requirement was added to the child abuse reporting scheme after 1975, and that it may result in trace cost increases to the claimant," but concludes that such costs are subject to a federal-state-local funding ratio and "not subject to state subvention."

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[55] *Alejo v. City of Alhambra, supra*, 75 Cal.App.4th 1180, 1186.

The Commission finds that the statute requires an entirely new duty that was not mandated by prior law. Therefore, the Commission finds that the plain language of Penal Code section 11169, subdivision (b), mandates a new program or higher level of service, for the following new activity:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
>
> - Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice.

The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

Penal Code Section 11170:

Penal Code section 11170[56] describes the duties of the DOJ to maintain the Child Abuse Central Index and make reports available. It refers to reports made pursuant to Penal Code section 11169. As described above, Penal Code section 11169 requires reports to be made by "an agency specified in Section 11165.9." When "submitting agency," "investigating agency" or similar terms are used in Penal Code section 11170, the statute refers back to the agencies that submitted the initial Child Abuse Investigation Reports pursuant to section 11169—which in turn are the agencies identified in Penal Code section 11165.9.

The pre-1975 law of former Penal Code section 11161.5 provided that if the DOJ records resulted in reports or information being returned to the reporting agency, the reports received were required to be made available to specified individuals "having a direct interest in the welfare of the minor" and others, including probation and child welfare departments, as follows:

> Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

Penal Code section 11170, subdivision (b)(1), requires that after information is received by "an agency that submits a report pursuant to Section 11169" from the DOJ "that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency," "[t]he agency shall make that information available to the reporting medical practitioner, child

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[56] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

custodian, guardian ad litem" or appointed counsel, "or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect." While the requirement is similar to prior law, there was no duty in prior law for the reporting agency to make reports and information available to the child custodian, guardian ad litem, appointed counsel or licensing agency. Therefore, the Commission finds that Penal Code section 11170, subdivision (b)(1) mandates a new program or higher level of service for the following activity:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

Another new provision, Penal Code section 11170, subdivision (b)(2) creates a duty for the agency that investigated a mandated report of child abuse to report back to the mandated reporter on the conclusion of the investigation. Penal Code section 11170, subdivision (b)(2) refers to the investigating agency of a report made pursuant to Penal Code section 11166, subdivision (a), which in turn requires mandated reports be made to agencies specified in section 11165.9. There was no duty in prior law for agencies listed in 11165.9 to provide such information, therefore, the Commission finds that Penal Code section 11170, subdivision (b)(2), mandates a new program or higher level of service for the following activity:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter.

Penal Code section 11170, subdivision (b)(5), now numbered (b)(6),[57] requires the DOJ to make information available to "investigative agencies or probation officers, or court investigators" "responsible for placing children or assessing the possible placement of children" regarding any known or suspected child abusers residing in the home. When such information is received by an investigating agency, the statute requires that the agency notify the person that they are in the Child Abuse Central Index. There was no duty in prior law for the investigating agency to provide such information; therefore, the Commission finds that Penal Code section 11170, subdivision (b)(5), now (b)(6), mandates a new program or higher level of service for the following activity:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect

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[57] This subdivision was renumbered by Statutes 2004, chapter 842.

investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report.

Claimant alleges that there is a new program or higher level of service required by Penal Code section 11170, subdivision (b)(6)(A), now renumbered (b)(8)(A).[58] The subdivision, as pled, provides that an investigating party, including any agency named in section 11169 that is required to make reports to the Child Abuse Central Index (these are the agencies receiving child abuse and neglect reports pursuant to section 11165.9), as well as district attorney's offices, and county licensing agencies, that receives information from the state Child Abuse Central Index is:

> responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

The Commission finds that the words "responsible for" in this statute are vague and ambiguous, and may be interpreted alternatively as either mandatory (e.g. "investigators *shall obtain* the original report,") or discretionary, (e.g. if the investigator finds it necessary for the investigation, they are to obtain the original report from the local reporter, rather than from the state.) Therefore it is necessary to look at extrinsic evidence of legislative intent.[59] The statutory language was added by Statutes 1990, chapter 1330 (Sen. Bill No. (SB) 2788), as double joined with Statutes 1990, chapter 1363 (Assem. Bill No. (AB) 3532.) The legislative history for SB 2788 yields a reading of "responsible for" as a mandatory term. Specifically, the Assembly Public Safety Committee, Republican Analysis, (Reg. Sess. 1989-1990) on SB 2788, version dated August 28, 1990, states:

> this bill would *require* any appropriate person or agency responsible for child care oversight to, upon notification that a report exist[s], seek the original information pertaining to the incident and make an independent decision on the merits of the report for investigation, prosecution or licensure determination. [Emphasis added.] [60]

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[58] This subdivision was renumbered by Statutes 2004, chapter 842.

[59] "Because the words themselves provide no definitive answer, we must look to extrinsic sources." *People v. Woodhead* (1987) 43 Cal.3d 1002, 1008.

[60] The court in *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31, "set forth a list of legislative history documents that have been recognized by the California Supreme Court or this court as constituting cognizable legislative history," including reports of the Assembly Committee on Public Safety (*supra* at p. 33.)

Further, although an author's letter to the Governor is not a reliable form of legislative history on its own, Sen. Newton R. Russell's August 31, 1990 letter to the Governor is consistent with the committee analysis cited above: "SB 2788 will also insert language stating that all authorized persons and agencies, if conducting either child abuse or child care licensing investigation, and having access to information form the CACI, are required to obtain, and make independent conclusions from, the original child abuse report." [Emphasis in original.]

Therefore, the Commission finds that Penal Code section 11170, subdivision (b)(6)(A), now (b)(8)(A), mandates a new program or higher level of service, as follows:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department, county licensing agency, or district attorney's office shall:*
>
> - Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index.

Penal Code section 11170, subdivision (c) requires that the DOJ provide information from the Child Abuse Central Index "to any agency responsible for placing children pursuant to …the Welfare and Institutions Code," section 305 et seq., "upon request," when relevant to a child's potential "placement with a responsible relative pursuant to" Welfare and Institutions Code sections 281.5, 305, and 361.3.

Welfare and Institutions Code section 305 et seq. refers to temporary custody and detention of dependent children. Welfare and Institutions Code section 281.5 refers to placement by a probation officer; section 305 refers to temporary custody by "any peace officer";[61] and section 361.3 concerns placement with a relative by "the county social worker and court." Thus, when any law enforcement agency, probation department, or child welfare department receives information regarding placement of a child with a relative from DOJ, as described in Penal Code section 11170, subdivision (c), the agency receiving the information is statutorily obligated to notify the individual "that he or she is in the index." There was no duty in prior law to provide such information; therefore, the Commission finds that Penal Code section 11170, subdivision (c), mandates a new program or higher level of service for the following activity:

> *Any city or county law enforcement agency, county probation department, or county welfare department shall:*
>
> - Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

Also, the claimant, at page 34 of the test claim filing, alleges that Penal Code section 11170, subdivision (d) requires that the claimant "provide certain information when necessary for out-of-state law enforcement agencies." The Commission finds that the subdivision is directed solely to "the department," which, when used through the rest of section 11170, refers to the state Department of Justice. The context of subdivision (d) does not suggest a different usage

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[61] Peace officers are defined at Penal Code section 830 et seq.

was intended.[62] Therefore the Commission finds that Penal Code section 11170, subdivision (d), does not mandate a new program or higher level of service.

Similarly, claimant alleges a mandate from Penal Code section 11170, subdivision (e), which provides that an individual may make a request to DOJ to "determine if he or she is listed in the Child Abuse Central Index." If they are listed, DOJ is required to provide "the date of the report and the submitting agency." Then "[t]he requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (a) of Section 11167.5." Penal Code section 11167.5 indicates that reports are available pursuant to the Public Records Act (Gov. Code, § 6250, et seq.) The duties expressed in Penal Code section 11170, subdivision (e) are imposed on the state or individuals; any related activities for local governments are required by prior law, specifically Government Code section 6253 of the Public Records Act, not the test claim statutes. Therefore, the Commission finds that Penal Code section 11170, subdivision (e), does not mandate a new program or higher level of service.

(F) Record Retention

Penal Code Section 11169, Subdivision (c):

Penal Code section 11169, subdivision (c), requires:

> Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

The time for retention of records on the Child Abuse Central Index is controlled by Penal Code section 11170,[63] as follows:

> (3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

Reading the two sections together, the record retention period for each of the underlying local investigatory files is a minimum of 10 years, much longer if a subsequent report on the same

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[62] "Terms ordinarily possess a consistent meaning throughout a statute." *People v. Standish* (2006) 38 Cal.4th 858, 870.

[63] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

suspected child abuser is received during the 10 year period. DSS and DOF dispute the claim for mandate reimbursement for record retention activities. DSS asserts that the duty to retain the child protective agency's investigative file documenting each investigation is not a new duty, citing Welfare and Institutions Code section 10851 and regulatory requirements for three years of records retention.[64] DOF also cites the pre-existing three-year record retention requirement, and concludes that "the longer retention requirement for child abuse investigation records imposes no new costs, and may in fact avoid the costs of record destruction. Finally, if the records are stored electronically, a longer retention period should result in no additional costs whatsoever." The Commission notes that the Welfare and Institutions Code record retention requirement is only applicable to public social services records. Records required to be held by city police and county sheriff's departments are only subject to the more general Government Code sections 26202 and 34090, which allow counties and cities, respectively, to authorize destruction of records after two years.

Statutes 1997, chapter 842 added the records retention requirements to Penal Code sections 11169 and 11170, resulting in a longer records retention period than otherwise required by prior law; thus mandating a higher level of service. Therefore, the Commission finds that Penal Code section 11169, subdivision (c) mandates a new program or higher level of service, for the following:

Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.

Issue 3: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is

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[64] DSS also cites the record retention requirement for juvenile courts (Welf. & Inst. Code, § 826), but it is irrelevant to the test claim allegations which address the records of the investigating agency, not those of the courts.

required to incur as a result of a statute or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564.

The only Government Code section 17556 exception that may apply to this test claim with respect to counties is subdivision (e), which provides, that "[t]he commission shall not find costs mandated by the state," if:

> ...
>
> (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

Both DSS and DOF's December 10, 2001 comments assert that there are state funds available that can be used for new state-mandated child abuse reporting-related activities. However, neither letter was specific in stating what funds were available for the activities.

On May 9, 2007, Commission staff requested that the state agencies provide additional information in this regard, to "identify what funds have been appropriated and allocated to each county for child abuse and neglect reporting and investigation services." On July 20, 2007, DOF filed a response to the request, stating that:

> Counties receive allocations from: 1) Title IV-E federal funds, 2) Temporary Assistance for Needy Families (TANF) block grants, 3) Title XIX Funds, 4) Title XX Funds, 5) Title IV-B Funds, and 6) the General Fund. Funds are appropriated in the annual Budget Act under Item 5180-151-0001. Additionally, transfer authority exists in other budget items that may be used for activities associated with ICAN. Attached for your reference is a compact disc (CD) containing the Budget Act appropriations (Item 5180-151-0001) for fiscal years 1999-2000 through 2006-2007. The sections contain the funds appropriated for Department of Social Services' local assistance programs. Please note that these appropriations do not specify the multiple programs or specific activities that may be funded with the appropriation.
>
> The following describes the purpose of the various funds allocated to the counties.
>
> - General Fund appropriations are used to match Title IV-E funds based on the 70/30 (state/county) share of nonfederal funds. Title IV-E funds and General Fund appropriations are also used to provide "augmentation funds" to counties beyond the predetermined formulas based on caseload. Augmentation funding occurs when a county has spent its share and additional money is needed to support County Welfare Services (CWS) programs.
> - TANF funds and county funds pay for emergency assistance, including investigation and crisis resolution activities performed by social workers.
> - Title IV-B funds are used to provide services and support to preserve families, protect children, and prevent child abuse and neglect.

- Title IV-E funds can be used for case management and emergency assistance activities as well as training and professional development of a child welfare workforce. These funds are budgeted based on a county welfare department's caseload and the number of social worker staff and clerical staff, using the specific county's salaries, benefits, and associated overhead costs.
- Title XIX funds are used for medical care assistance of CWS programs.
- Title XX funds are used to provide for more flexibility in the delivery of child welfare services. These funds are not used for medical care or employee wages.

DOF's CD also includes copies of the DSS County Fiscal Letters from 1999-2000 through 2006-2007, as well as a table summarizing county welfare funding for those fiscal years.

Despite all of the documentation provided, there is no evidence in the record to demonstrate that the mandated activities have been offset or funded by the state or federal government in a manner and amount "sufficient to fund the cost of the state mandate." On the contrary, Welfare and Institutions Code section 10101 indicates that "the state's share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program or the amount appropriated by the Legislature for that purpose, whichever is less." Conversely, counties must have a share of costs for child welfare services of at least 30 percent of the nonfederal expenditures. Even the augmentation funds are only available, according to DOF's letter, "when a county has spent *its share* and additional money is needed." In addition, the funding information is limited to county welfare departments and does not include costs incurred by local law enforcement, when they perform the mandated activities identified.

DOF's December 10, 2001 comments cite the *County of Fresno, supra,* 53 Cal.3d. at page 487, to conclude that because test claim activities are jointly funded, "the test claim legislation is not subject to state subvention." The *County of Fresno* decision addressed a challenge to the constitutionality of Government Code section 17556, subdivision (d), which provides an exception to a finding of costs mandated by the state when the local government may pay for the new activities through service charges, fees, or assessments. In determining that the limit expressed by subdivision (d) was constitutional, the California Supreme Court stated that "the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes." However, contrary to DOF's suggestion, the *County of Fresno* decision does not apply as this test claim does not have facts addressing available fees, service charges, or assessments for mandatory child abuse reporting.

Government Code section 17556, subdivision (e) requires that there must be "no net costs," or appropriated funds must be "*specifically intended* to fund the costs of the state mandate in an *amount sufficient* to fund the cost of the state mandate." To interpret the law as the December 10, 2001 state agency comments urge would render much of the language of Government Code section 17556, subdivision (e) meaningless. The Commission finds that section 17556, subdivision (e) does not apply to disallow a finding of costs mandated by the state, but that all claims for reimbursement for the approved activities must be offset by any program funds already received and applied to the program from non-local sources. There is no evidence that the counties are required to use the funds identified by DOF for the expenses of the mandated activities.

Thus, for the activities listed in the conclusion below, the Commission finds that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

CONCLUSION

The Commission concludes that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903, and "Child Abuse Investigation Report" Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

Distributing the Suspected Child Abuse Report Form:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)[65]

Reporting Between Local Departments
Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)[66]

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[65] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958.

[66] As added by Statutes 2000, chapter 916, operative January 1, 2001.

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (h), now subd. (j).)[67]
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)[68]

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

  This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay." (Pen. Code, § 11166, subd. (h), now subd. (j).)[69]

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[67] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[68] *Ibid.*

[69] *Ibid.*

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)[70]

Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

A city or county law enforcement agency shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)[71]
- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)[72]
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (i), now subd. (k).)[73]

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[70] *Ibid.*

[71] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[72] *Ibid.*

[73] *Ibid.*

Receipt of Cross-Reports by District Attorney's Office:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b). (Pen. Code, § 11166, subds. (h) and (i), now subds. (j) and (k).)[74]

Reporting to Licensing Agencies:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

  As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166.2.)[75]

Additional Cross-Reporting in Cases of Child Death:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)[76]

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[74] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[75] As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

[76] As amended by Statutes 1999, chapter 1012, operative January 1, 2000. This code section has since been renumbered as Penal Code section 11174.34, without amendment, by Statutes 2004, chapter 842.

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)[77]
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)[78]
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)[79]

Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)[80]
- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)[81]

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[77] *Ibid.*

[78] *Ibid.*

[79] *Ibid.*

[80] Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Regulation as filed and operative July 17, 1998.

[81] *Ibid.*

Notifications Following Reports to the Child Abuse Central Index

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)[82]
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)[83]
- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)[84]
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)[85]

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child,

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[82] As amended by Statutes 1997, chapter 842, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

[83] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

[84] *Ibid.*

[85] As amended by Statutes 1997, chapter 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. This subdivision was renumbered by Statutes 2004, chapter 842.

when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).)[86]

Any city or county law enforcement agency, county probation department, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

Record Retention

Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)[87]

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)[88]

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

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[86] *Ibid.*

[87] As amended by Statutes 1997, chapter 842.

[88] *Ibid.*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
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: (916) 445-0278
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Exhibit L

May 22, 2009

Mr. Keith Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Revised Draft Staff Analysis and Hearing Date
Child Abuse and Neglect Reporting; 01-TC-21 consolidated with
Interagency Child Abuse and Neglect (ICAN) Investigative Reports, 00-TC-22
Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11165.14, 11166, 11166.2, 11166.5, 11168, 11169, 11170, and 11174.3, Including Former Penal Code Sections 11161.5, 11161.6, 11161.7
Statutes, 1975, Chapter 226, Statutes 1976, Chapters 242 and 1139, Statutes 1977, Chapter 958, Statutes 1978, Chapter 136, Statutes1979, Chapter 373, Statutes 1980, Chapters 855, 1071, and 1117, Statutes 1981, Chapters 29 and 435, Statutes 1982, Chapters 162 and 905, Statutes 1984, Chapters 1170, 1391, 1423, 1613, and 1718, Statutes 1985, Chapters 189, 464, 1068, 1420, 1528, 1572, and 1598, Statutes 1986, Chapters 248, 1289, and 1496, Statutes 1987, Chapters 39, 269, 1497, and 1580, Statutes 1989, Chapter 153, Statutes 1990, Chapters 650, 931, 1330, 1363, and 1603, Statutes 1991, Chapters 132 and 1102, Statutes 1992, Chapter 459, Statutes1993, Chapters 219, 346, 510, and 1253, Statutes1994, Chapter 1263, Statutes 1996, Chapters 1080, 1081, and 1090, Statutes 1997, Chapters 83, 134, 842, 843, and 844, Statutes 1998, Chapter 311, Statutes 1999, Chapters 475 and 1012, Statutes 2000, Chapters 287 and 916, Statutes 2001, Chapters 133 and 754
San Bernardino Community College District, Claimant

Dear Mr. Petersen:

The draft staff analysis of this matter is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **June 22, 2009.** You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Friday, July 31, 2009,** at 9:30 a.m. in Room 447, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about July 17, 2009. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Camille Shelton at (916) 323-3562 if you have questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure

ITEM __

TEST CLAIM
REVISED DRAFT STAFF ANALYSIS

Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11165.14, 11166, 11166.2, 11166.5, 11168, 11169, 11170, and 11174.3,
Including Former Penal Code Sections 11161.5, 11161.6, 11161.7

Statutes 1975, Chapter 226
Statutes 1976, Chapters 242 and 1139
Statutes 1977, Chapter 958
Statutes 1978, Chapter 136
Statutes 1979, Chapter 373
Statutes 1980, Chapters 855, 1071 and 1117
Statutes 1981, Chapters 29 and 435
Statutes 1982, Chapters 162 and 905
Statutes 1984, Chapters 1170, 1391, 1423, 1613, and 1718
Statutes 1985, Chapters 189, 464, 1068, 1420, 1528, 1572 and 1598
Statutes 1986, Chapters 248, 1289, and 1496
Statutes 1987, Chapters 82, 531, 640, 1020, 1418, 1444 and 1459
Statutes 1988, Chapters 39, 269, 1497, and 1580
Statutes 1989, Chapter 153
Statutes 1990, Chapters 650, 931, 1330, 1363, and 1603
Statutes 1991, Chapters 132 and 1102
Statutes 1992, Chapter 459
Statutes 1993, Chapters 219, 346, 510 and 1253
Statutes 1994, Chapter 1263
Statutes 1996, Chapters 1080, 1081 and 1090
Statutes 1997, Chapters 83, 134, 842, 843, and 844
Statutes 1998, Chapter 311
Statutes 1999, Chapters 475 and 1012
Statutes 2000, Chapters 287 and 916
Statutes 2001, Chapters 133 and 754

Child Abuse and Neglect Reporting (01-TC-21)
Consolidated with
Interagency Child Abuse and Neglect (ICAN) Investigative Reports (00-TC-22)

San Bernardino Community College District, Claimant

EXECUTIVE SUMMARY

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program on K-12 school districts and community college

districts. Declarations of costs have been filed by the claimant and San Jose Unified School District.

Background

This test claim was filed in addition to a separate test claim on *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*, 00-TC-22) by the County of Los Angeles on many of the same statutes, regarding the activities alleged to be required of city and county law enforcement, county welfare, and related departments. On September 7, 2007, the claimant here, San Bernardino Community College District, filed interested party comments on the draft staff analysis for the *ICAN* test claim, 00-TC-22, requesting that the findings for that test claim apply to "all police departments and law enforcement agencies," including school district and community college district police departments. At that time, litigation was pending in the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (addressing *Peace Officer Procedural Bill of Rights*), on the state mandate issue for school district and community college district police departments. Thus, the Department of Finance requested that the Commission postpone ruling on the state mandate issue for school districts in the *ICAN* (00-TC-22) test claim until after the litigation became final. The Department's request was granted, and the test claim statutes and executive orders pled in *ICAN* (00-TC-22) that apply to school district and community college district police departments were severed from *ICAN* (00-TC-22) and are now consolidated with this test claim.[1]

On February 6, 2009, the Third District Court of Appeal issued a published decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, finding that school districts and community college districts are not mandated by the state to hire peace officers and establish police departments and, thus, were not entitled to reimbursement under article XIII B, section 6 of the California Constitution for the costs of complying with the *Peace Officer Procedural Bill of Rights* program. The court's decision became final on March 19, 2009.

Analysis

Staff finds that the state has not mandated school district or community college district "police or security departments" and "law enforcement agencies" to comply with the child abuse and neglect reporting requirements imposed on the police departments and law enforcement agencies of cities and counties. Staff further finds that many of the test claim statutes do not impose mandatory new duties on school districts and community college districts.

Staff finds, however, two new mandated activities alleged that are not required by prior law, thus mandating a new program or higher level of service for K-12 school districts, as described below.

Conclusion

Staff concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for K-12 school districts within the meaning

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[1] On December 6, 2007, the Commission adopted the Statement of Decision in *ICAN* (00-TC-22), approving the claim for local agency police and sheriff's departments, welfare departments, probation departments, and district attorney's offices.

of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

  > The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)

The period of reimbursement for these activities begins July 1, 2000.

Staff further concludes that the test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim for K-12 school districts.

STAFF ANALYSIS

Claimant

San Bernardino Community College District

Chronology

06/28/02	Claimant files the test claim with the Commission on State Mandates (Commission)
07/08/02	Commission staff issues the completeness review letter and requests comments from state agencies
08/02/02	Department of Finance (DOF) requests an extension of time for filing comments for 120 days, to consult with the Office of the Attorney General
08/05/02	Commission staff grants a 90-day extension to November 5, 2002
08/08/02	Department of Social Services (DSS) requests an extension of time to November 26, 2002
08/12/02	Commission staff grants the extension of time as requested
10/21/02	DOF files letter confirming that they also have an extension of time to file comments until November 26, 2002
11/25/02	DSS files comments on the test claim
11/26/02	DOF files comments on the test claim
12/26/02	Claimant files rebuttal to comments by DOF
12/31/02	Commission staff issues a request to the claimant for a response to the state agency comments
01/17/03	Claimant submits response to the Commission's request, responding to the DSS comments and referring to earlier response to DOF's comments
08/14/07	Draft staff analysis on separate, but related test claim, *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*, 00-TC-22), filed by the County of Los Angeles issued
09/07/07	San Bernardino Community College District files interested party comments on the *ICAN* draft staff analysis (00-TC-22) requesting that the findings apply to "all police departments and law enforcement agencies," including school district and community college district police departments
09/12/07	Commission staff requests comments from the California Community Colleges
10/17/07	Commission staff issues the draft staff analysis on the test claim
11/08/07	Claimant files comments on the draft staff analysis
11/20/07	Final staff analysis issued for the December 6, 2007 Commission hearing
11/21/07	Final staff analysis issued for the December 6, 2007 Commission hearing on the *ICAN* test claim (00-TC-22), which included an analysis and staff recommendation on school district and community college district police departments

12/03/07	Department of Finance requests postponement of hearing on *ICAN* (00-TC-22) on the ground that the state mandate issue involving school district and community college district police departments was pending in the Third District Court of Appeal in *Department of Finance v. Commission on State Mandates*, Case No. C056833
12/05/07	Commission approves Department of Finance's request for postponement of the *ICAN* test claim (00-TC-22) for those portions of the claim related to the adjudication in *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833. The test claim statutes and executive orders pled in *ICAN* (00-TC-22) that apply to school district and community college district police departments are severed from *ICAN* (00-TC-22) and consolidated with this claim (*Child Abuse and Neglect Reporting*, 01-TC-21). The hearing on the consolidated test claim (00-TC-22 and 01-TC-21) is postponed until after the final adjudication in the *Department of Finance v. Commission on State Mandates* case
12/06/07	Statement of Decision adopted in *ICAN* (00-TC-22) with respect to local agency claims
02/06/09	Third District Court of Appeal issues published decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355. Decision becomes final on March 19, 2009
05/--/09	Draft staff analysis issued on consolidated test claim (00-TC-22, 01-TC-21)

Background

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program on school districts and community college districts.

A separate test claim, *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*, 00-TC-22), was filed by the County of Los Angeles on many of the same statutes, regarding the activities alleged to be required of law enforcement, county welfare, and related departments. San Bernardino Community College District filed interested party comments on the draft staff analysis for the *ICAN* test claim, 00-TC-22, on September 7, 2007, requesting that the findings for that test claim apply to "all police departments and law enforcement agencies," including school district and community college district police departments. At that time, litigation was pending in the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (addressing *Peace Officer Procedural Bill of Rights*), on the state mandate issue for school district and community college district police departments. Thus, the Department of Finance requested that the Commission postpone ruling on the state mandate issue for school districts in the *ICAN* (00-TC-22) test claim until after the litigation became final. The Department's request was granted, and the test claim statutes and executive orders pled in

ICAN (00-TC-22) that apply to school district and community college district police departments were severed from *ICAN* (00-TC-22) and consolidated with this test claim.[2]

On February 6, 2009, the Third District Court of Appeal issued a published decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, finding that school districts and community college districts are not mandated by the state to hire peace officers and establish police departments and, thus, were not entitled to reimbursement under article XIII B, section 6 of the California Constitution for the costs of complying with the *Peace Officer Procedural Bill of Rights* program. The court's decision became final on March 19, 2009.

Test Claim Statutes

A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and substantively amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or "CANRA."

The court in *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, pages 258-260, provides an overview of the complete Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq. (footnotes omitted):

> The law is designed to bring the child abuser to justice and to protect the innocent and powerless abuse victim. (See Comment, *Reporting Child Abuse: When Moral Obligations Fail* (1983) 15 Pacific L.J. 189.) The reporting law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. (*Id.*, at pp. 189-190.) Physical abuse, sexual abuse, willful cruelty, unlawful corporal punishment and neglect must be reported.
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> ¶...¶
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> The reporting law applies to three broadly defined groups of professionals: "health practitioners," child care custodians, and employees of a child protective agency. "Health practitioners" is a broad category subdivided into "medical" and "nonmedical" practitioners, and encompasses a wide variety of healing professionals, including physicians, nurses, and family and child counselors. (§§ 11165, subds. (i), (j); 11165.2.) "Child care custodians" include teachers, day care workers, and a variety of public health and educational professionals. (§§ 11165, subd. (h); 11165.1 [first of two identically numbered sections]; 11165.5.) Employees of "child protective agencies" consist of police and sheriff's officers, welfare department employees and county probation officers. (§ 11165, subd. (k).)
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> The Legislature acknowledged the need to distinguish between instances of abuse and those of legitimate parental control. "[T]he Legislature recognizes that the reporting of child abuse ... involves a delicate balance between the right of parents

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[2] On December 6, 2007, the Commission adopted the Statement of Decision in *ICAN* (00-TC-22), approving the claim for local agency police and sheriff's departments, welfare departments, probation departments, and district attorney's offices.

to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child ... . [I]t is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline." (Stats. 1980, ch. 1071, § 5, p. 3425.)

To strike the "delicate balance" between child protection and parental rights, the Legislature relies on the judgment and experience of the trained professional to distinguish between abusive and nonabusive situations. "[A]ny child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment *whom he or she knows or reasonably suspects has been the victim of child abuse* shall report the known or suspected instance of child abuse to a child protective agency .... '[R]easonable suspicion' means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, *drawing when appropriate on his or her training and experience*, to suspect child abuse." (§ 11166, subd. (a), italics added.) As one commentator has observed, "[t]he occupational categories ... are presumed to be uniquely qualified to make informed judgments when suspected abuse is not blatant." (See Comment, *Reporting Child Abuse: When Moral Obligations Fail, supra.*, 15 Pacific L.J. at p. 214, fn. omitted.)

The mandatory child abuse report must be made to a "child protective agency," i.e., a police or sheriff's department or a county probation or welfare department. The professional must make the report "immediately or as soon as practically possible by telephone." The professional then has 36 hours in which to prepare and transmit to the agency a written report, using a form supplied by the Department of Justice. The telephone and the written reports must include the name of the minor, his or her present location, and the information that led the reporter to suspect child abuse. (§§ 11166, subd. (a); 11167, subd. (a); 11168.) Failure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a $1,000 fine. (§ 11172, subd. (e).)

The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff's department, and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney. (§ 11166, subd. (g).) Initial reports are confidential, but may be disclosed to anyone involved with the current investigation and prosecution of the child abuse claim, including the district attorney who has requested notification of any information relevant to the reported instance of abuse. (§ 11167.5.)

A child protective agency receiving the initial child abuse report then conducts an investigation. The Legislature intends an investigation be conducted on every report received. The investigation should include a determination of the "person or persons apparently responsible for the abuse." (Stats. 1980, ch. 1071, § 5, pp. 3425-3426.) Once the child protective agency conducts an "active investigation" of a report and determines that it is "not unfounded," the agency must forward a

written report to the Department of Justice, on forms provided by the department. (§§ 11168, 11169.) An "unfounded" report is one "which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse as defined in Section 11165." (§ 11165.6, subd. (c)(2).)

The Department of Justice retains the reports in a statewide index, a computerized data bank known as the "Child Abuse Central Registry," which is to be continually updated and "shall not contain any reports that are determined to be unfounded." (§ 11170, subd. (a).) If a child protective agency subsequently determines that a report is "unfounded," it must so inform the Department of Justice who shall remove the report from its files. (§ 11169.)

The reports in the registry are not public documents, but may be released to a number of individuals and government agencies. Principally, the information may be released to an investigator from the child protective agency currently investigating the reported case of actual or suspected abuse or to a district attorney who has requested notification of a suspected child abuse case. Past reports involving the same minor are also disclosable to the child protective agency and the district attorney involved or interested in a current report under investigation. In addition, future reports involving the same minor will cause release of all past reports to the investigating law enforcement agencies. (§§ 11167.5, subd. (b)(1); 11167, subd. (c); 11170, subd. (b)(1).)

Claimant's Position

San Bernardino Community College District's June 28, 2002[3] test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege new activities for school districts, county offices of education, and community college districts, as follows:[4]

- Mandated reporting of known or suspected child abuse to a police or sheriff's department, or to the county welfare department, as soon as practicable by telephone, and in writing within 36 hours. (Pen. Code, §§ 11165.9 and 11166, subd. (a).) "All mandated reporters are further compelled to report incidents of child abuse or neglect by the fact that failure to do so is a misdemeanor, pursuant to Penal Code Section 11166, Subdivision (b)."
- Mandated reports "are required to be made on forms adopted by the Department of Justice" (Pen. Code, § 11168.)
- "To assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." (Pen. Code, § 11165.14.)
- "To notify the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." (Pen. Code, § 11174.3.)

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[3] The potential reimbursement period begins no earlier than July 1, 2000, based upon the filing date for this test claim. (Gov. Code, § 17557.)

[4] Test Claim Filing, pages 122-124.

- "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided." (Pen. Code, § 11165.7, subd. (d).)
- "When training their mandated reporters in child abuse or neglect reporting, to supply those trainees with a written copy of their reporting requirements and a written disclosure of their confidentiality rights." (Pen. Code, § 11165.7, subd. (c).)
- "To obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties." (Pen. Code, § 11166.5.)
- The claimant also requests reimbursement for all the activities required of "police departments" and "law enforcement agencies," including school district and community college district police.

The filing includes a declaration from the San Bernardino Community College District Chair of Child Development and Family and Consumer Science, and a declaration from the San Jose Unified School District, Director of Student Services, stating that each of the districts have incurred unreimbursed costs for the above activities.

The claimant rebutted the state agency comments on the test claim filing in separate letters dated December 19, 2002 (responding to DOF), and January 17, 2003 (responding to DSS). The claimant filed comments on the draft staff analysis dated November 7, 2007. The claimant's substantive arguments will be addressed in the analysis below.[5]

Department of Finance Position

In comments filed November 26, 2002, DOF alleges the test claim does not meet basic test claim filing standards, and "requests that the Commission reject the claim for failure to comply with the specificity requirement in 2 CCR section 1183(e)." Further, DOF argues that the claim should be denied, because:

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[5] In the December 19, 2002 rebuttal, the claimant argues that the state DOF comments are "incompetent" and should be stricken from the record since they do not comply with the Commission's regulations (Cal. Code Regs, tit. 2, § 1183.02, subd. (d).) That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that "DOF's comments do not comply with this essential requirement."

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied upon by staff at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The state agency responses contain comments on whether the Commission should approve this test claim and are, therefore, not stricken from the administrative record.

> [T]he District fails to point to any provision of law or regulation that defines a community college district as a mandated reporter within the meaning of Penal Code section 11165.7. While several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.) ...
>
> As a final matter, the Department moves to strike the declaration of ... Director of Student Services at the San Jose Unified School District [because the statements] do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4). The declaration is therefore irrelevant to the mandate claim submitted by the San Bernardino Community College District.

Department of Social Services Position

DSS's comments on the test claim filing, submitted November 25, 2002, also argue that the test claim as submitted fails "to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by Title 2, California Code of Regulations (CCR), section 1183(e)."

DSS also challenges the claim on several substantive points including: arguing that Penal Code section 11165.14 does not impose a duty on its face to cooperate and assist law enforcement agencies, as pled; and the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim." In addition, DSS asserts that the training of mandated reporters "is optional, and can be avoided if it reports to the State Department of Education why such training was not provided [and] the report can be transmitted orally or electronically, at no or de minimis cost to Claimant."

Discussion

The courts have found that article XIII B, section 6, of the California Constitution[6] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[7] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[8] A test claim statute or executive order may impose a reimbursable state-mandated

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[6] Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[7] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

program if it orders or commands a local agency or school district to engage in an activity or task.[9] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[10]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[11] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[12] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[13]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[14]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[15] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[16]

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[8] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[9] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[10] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar)*.

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[12] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[13] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[14] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[15] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[16] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue 1: What is the scope of the Commission's jurisdiction on this test claim and is a community college district an eligible test claimant under the test claim statutes?

(A) What is the scope of the Commission's jurisdiction on this test claim?

As a preliminary matter, DSS and DOF challenged the sufficiency of the test claim pleadings in comments filed November 25 and 26, 2002, respectively.

Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the claimant is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim. At the time of the test claim filing on June 28, 2002, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:[17]

> All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:
>
> (1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

The regulation also required copies of all "relevant portions of" law and "[t]he specific chapters, articles, sections, or page numbers must be identified," as well as a detailed narrative describing the prior law and the new program or higher level of service alleged. Staff finds that the Commission has jurisdiction over the statutes and code sections listed on the test claim title page and described in the narrative, and each will be analyzed below for the imposition of a reimbursable state mandated program.

(B) Is a community college district an eligible test claimant under the test claim statutes?

DOF also raised the issue that the claimant, as a community college district, is not a proper party to the claim because "[w]hile several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.)"

Staff finds that the term "teachers," as used in the Child Abuse and Neglect Reporting Act, is inclusive of community college district teachers. The term is deliberately broad as it is used in the statutory list of mandatory child abuse reporters. That list is currently found at Penal Code section 11165.7, and begins:

> (a) As used in this article, "mandated reporter" is defined as any of the following:
>
> (1) A teacher.
> (2) An instructional aide.
> (3) A teacher's aide or teacher's assistant employed by any public or private

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[17] The required contents of a test claim are now codified at Government Code section 17553.

school.
(4) A classified employee of any public school.
(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school. ...

An Attorney General Opinion (72 Ops.Cal.Atty.Gen. 216 (1989)) analyzed the wording of earlier versions of the statutory scheme to find that a ballet teacher at a post-secondary private school in San Francisco was included in the meaning of the word "teacher," as used in CANRA, when the school admitted students as young as eight years old.[18] The opinion goes into great detail using statutory construction to deduce the legislative meaning of the word "teacher" in this context. Finding that the word "teacher" is now singled out in the statute without any qualification, the opinion reaches the following conclusion:

> Without intending to suggest that the meaning of the word "teacher" as found in the Act is without bounds and mandates a reporting duty on any person who happens to impart some knowledge or skill to a child, we do not accept the proffered limitation that it applies only to teachers in K-12 schools. We find nothing in the statutory language of the Child Abuse and Neglect Reporting Act to support such a limitation on the plain meaning of the word "teacher".
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> ¶ ... ¶
>
> The Child Abuse and Neglect Reporting Act imposes a duty on "teachers" to report instances of child abuse that they come to know about or suspect in the course of their professional contact in order that child protective agencies might take appropriate action to protect the children. We are constrained to interpret the language of the Act according to the ordinary meaning of its terms to effect that purpose. Doing so, we conclude that a person who teaches ballet at a private ballet school is a "teacher" and thus a "child care custodian" as defined by the Act, and therefore has a mandatory duty to report instances of child abuse under it.

The term "teacher" is applied to community college instructors elsewhere in the Penal Code, and in case law.[19] CANRA is aimed at the protection of individuals under the age of 18 from child abuse and neglect;[20] therefore it is significant that community colleges are required to serve some students under 18 years old. Education Code section 76000 provides that "a community college district shall admit to the community college any California resident ... possessing a high school diploma or the equivalent thereof." Education Code section 48412 requires that the proficiency exams be offered to any students "16 years of age or older," who has or will have completed 10th grade, and "shall award a "certificate of proficiency" to persons who demonstrate that proficiency. The certificate shall be equivalent to a high school diploma." Thus 16 and 17 year olds can be regular students at community colleges.

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[18] "An opinion of the Attorney General "is not a mere 'advisory' opinion, but a statement which, although not binding on the judiciary, must be 'regarded as having a quasi judicial character and [is] entitled to great respect,' and given great weight by the courts." (*Community Redevelopment Agency of City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 727.)

[19] For examples, see Penal Code section 291.5 and *Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d 82.

[20] Penal Code sections 11164 and 11165.

Therefore, staff finds that a community college district is an eligible test claimant under the test claim statutes, as some of the claimed activities apply to employers of mandated reporters, including teachers. However, the issue of community college districts being "school districts" within the meaning of CANRA is more complex, and will be analyzed as the term appears in the test claim statutes below.

Issue 2: Do the test claim statutes mandate a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by school districts.[21] Thus, in order for a test claim statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that school districts perform an activity or task.

The test claim allegations will be analyzed by areas of activities, as follows: (a) duties imposed on school district and community college district "police departments" and "law enforcement agencies;" (b) mandated reporting of child abuse and neglect; (c) training mandated reporters;

(d) investigation of suspected child abuse involving a school site or a school employee; (e) employee records.

(A) Duties Imposed on School District and Community College District "Police Departments" and "Law Enforcement Agencies"

The claimant contends that the activities required by the test claim statutes of "police departments" and "law enforcement agencies" constitute state-mandated duties for school district and community college district police and that such duties are reimbursable under article XIII B, section 6 of the California Constitution.

Activities performed by "any police department ..." not including "a school district police or security department"

Penal Code section 11165.9 requires that mandated reports of suspected child abuse or neglect shall be made to:

> *any police department*, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. *It does not include a school district police or security department.* (Emphasis added.)

This definition is also cross-referenced throughout the Child Abuse and Neglect Reporting Act, delineating the local departments responsible for particular follow-up reporting activities and investigation. For example, the Act requires "any police department ..." (not including a school district police or security department) to also perform the following activities:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)

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[21] *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to any agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)
- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials. (Pen. Code, § 11166.2.)
- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12 for purposes of preparing or submitting the state "Child Abuse Investigation Report" Form SS 8583. or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)
- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)
- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)
- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect

investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).)
- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 10 years. If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, §§ 11169, subd. (c); 11170, subd. (a)(3).)

The plain language of Penal Code section 11165.9 states that "school district police or security departments" are not required to perform the activities listed above. This is true of current law,[22] as well as prior law. Former Penal Code section 11165.9, added by Statutes 1987, chapter 1459, stated "as used in this article, "child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department. *It does not include a school district police or security department.*" [Emphasis added.]

However, there must be a determination of what is meant by "school district police or security departments" in the context of Penal Code section 11165.9 – specifically, did the Legislature intend that community college districts be included in this term? "School district" has been defined elsewhere in the California codes to be inclusive of community college districts for particular purposes, such as in the Commission's own statutes.[23] However, rules of statutory construction demand that we first look to the words in context to determine the meaning.[24] "School district" is not defined in Penal Code section 11165.9 or elsewhere in the Child Abuse and Neglect Reporting Act, nor is there a general definition to be used in the Penal Code as a whole.

In *RRLH, Inc. v. Saddleback Valley Unified School Dist.* (1990) 222 Cal.App.3d 1602, 1609, the court engaged in statutory construction to determine whether a particular instance of the term "local agency or district" was inclusive or exclusive of "school districts." While the case does not resolve the question here, it does lay out the rules of statutory construction to be used in reaching a conclusion:

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[22] Penal Code section 11165.9, amended last by Statutes 2006, chapter 701, provides mandated reporters shall make reports of suspected child abuse or neglect "to any police department or sheriff's department, not including a school district police or security department ..."

[23] Government Code section 17519 defines "school district" as "any school district, community college district, or county superintendent of schools."

[24] "Statutory language is not considered in isolation. Rather, we 'instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.'" *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261.

> We acknowledge the Legislature has not always been consistent in its definition of local agency or district, sometimes excluding and sometimes including school districts. (See [Gov. Code,] § 66000.) Accordingly, we must look to the general principles of statutory construction to harmonize the seemingly conflicting provisions of section 53080 and former section 53077.5.
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> Preeminent among statutory construction principles is the requirement that courts must ascertain the intent of the Legislature. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698, 170 Cal.Rptr. 817, 621 P.2d 856; *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 17-18, 194 Cal.Rptr. 722.) Further, legislation should be given a reasonable, common sense interpretation consistent with the apparent purpose of the Legislature. In addition, legislation should be interpreted so as to give significance to every word, phrase and sentence of an act. And all parts of the legislation must be harmonized by considering the questioned parts in the context of the statutory framework taken as a whole. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230, 110 Cal.Rptr. 144, 514 P.2d 1224; *McCauley v. City of San Diego* (1987) 190 Cal.App.3d 981, 992, 235 Cal.Rptr. 732.)

Education Code section 38000[25] authorizes the formation of K-12 school district police and security departments. Community college district police departments are authorized under Education Code section 72330, which although it was derived from the same original statute as Education Code section 38000, was renumbered with the reorganization of the Education Code by Statutes 1976, chapter 1010. The reorganization furthered the statutory distinctions between K-12 "school districts" and "community college districts," which have since grown throughout the California codes, including the Penal Code.[26] Education Code section 72330 et seq. never uses the term "school district," but rather consistently refers to a "community college police department."

The Legislature is deemed to be aware of existing laws and could have crafted the exception in Penal Code section 11165.9 for "school district police and security departments" to explicitly include "community college districts" in the definition of school districts for this purpose. "We must assume that the Legislature knew how to create an exception if it wished to do so...." (*City of Ontario v. Superior Court* (1993) 12 Cal.App.4th 894, 902, 16 Cal.Rptr.2d 32.) The fact that it has done so elsewhere in the Penal Code is further evidence of the fact that the Legislature knows how to include community college districts in the definition of school districts for certain purposes, and yet did not do so here.[27]

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[25] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

[26] Penal Code section 291, 291.1 and 291.5 set up separate statutes for law enforcement informing public schools, private schools, and community college districts, respectively when a teacher, instructor or other employees are arrested for sex offenses.

[27] Penal Code section 830.32 separately describes "[m]embers of a California Community College police department appointed pursuant to Section 72330 of the Education Code" and "members of a police department of a school district pursuant to Section 38000 of the Education Code." Further, Penal Code section 13710, subdivision (a)(2), relating to restraining orders,

Further, limiting the exclusion of "school district police or security departments" from the entities required to perform the above activities to K-12 school districts is consistent with legislative history. Penal Code section 11165.9, as added by Statutes 1987, chapter 1459, was derived from a definition found in former Penal Code section 11165—that section had been amended earlier in the same session by Statutes 1987, chapter 1444 (Sen. Bill (SB) No. 646) to specify for the first time that police departments do not include school district police and security departments. The Senate Rules Committee, Office of Senate Floor Analyses, 3rd reading analysis of SB 646 (Reg. Sess. 1987-1988), as amended September 1, 1987, states:

> According to Senator Watson's Task Force on Child Abuse and its Impact on Public Schools, there has been a great deal of concern expressed over reports of alleged child abuse being made to a school district police or security department rather than to local law enforcement agencies. Existing law is unclear about whether such reports meet the statutory criteria.
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> These school related agencies do not always have the full training that other peace officers receive, and often they do not have the personnel necessary to deal with reports of child abuse. Moreover, procedures and recordkeeping vary from school to school; thus, the possibility exists that reports might be lost or rendered unusable in any subsequent criminal action.
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> According to the Senate Judiciary Committee analysis, this bill has been recommended to clarify that school district police or security departments would not be considered child protective agencies for the purposes of child abuse reporting.

The analysis also states that the other purpose of the bill:

> is to narrow the definition of child abuse for the purposes of reporting to allow school personnel to break up fights on the premises and to defend themselves. ¶...¶ The task force listened to a number of individuals employed by school districts who complained that the reporting requirements under existing law were too vague. As a result, reports of abuse were made against school personnel who engaged in certain conduct which might be considered abusive in certain situations but which was employed in order to stop a fight, used for self-defense, or applied to take possession of weapons or dangerous objects from a pupil. School personnel suggested the vagueness of the existing reporting requirements coupled with the fact that their positions demanded a substantial amount of contact with unruly and disruptive children subjected them to repeated reports of child abuse, each of which needed to be investigated.

In this context, referencing "public schools," "pupils," and "unruly and disruptive children," the Legislature's use of the term "school district" is consistent with a limitation to K-12. In addition, one further distinction exists in the authorizing statutes for K-12 school district police departments, and the corresponding community college district statute. Education Code section 38000 includes the following language: "It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers." This language was not

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states: "The police department of a community college or school district described in subdivision (a) or (b) of Section 830.32 shall ... ."

included in Education Code section 72330 when it was derived from the earlier code section, indicating that community college police departments do not have the same fundamental restriction on their purpose and authority. Based upon all of the above, staff finds that the meaning of "school district police or security department" in Penal Code section 11165.9 is the same as that found in Education Code section 38000, which solely authorizes the formation of K-12 school district police and security departments.

Thus, K-12 school districts are not required to receive child abuse and neglect reports pursuant to Penal Code section 11165.9 and engage in follow-up reporting and investigation activities, but community college district police departments are required by the test claim statutes to perform these activities. For the reasons below, however, staff finds that the activities listed above are not mandated by the state for community college district police departments.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings. [28]

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[29] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders." [30] The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[31] The court stated the following:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)[32]

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state,

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[28] *Kern High School Dist., supra*, 30 Cal.4th 727.

[29] *Id.* at page 737.

[30] *Ibid.*

[31] *Id.* at page 743.

[32] *Ibid.*

based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.][33]

Community college districts are authorized, but not required by the Education Code to employ peace officers.[34] Thus, the underlying decision to employ peace officers is discretionary and not legally compelled by the state. Therefore, the activities required by the test claim statutes of community college district police are, likewise, not legally compelled by the state.

Absent such legal compulsion, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. The Supreme Court in *Kern High School Dist.* addressed the issue of "practical" compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern,* the court determined there was no "practical" compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face "certain and severe ... penalties" such as "double ... taxation" or other "draconian" consequences.[35]

In 2009, the Third District Court of Appeal decided *Department of Finance v. Commission on State Mandates*, and applied the *Kern* practical compulsion test to determine whether school district police departments were mandated by the state to comply with requirements imposed by the Peace Officer Procedural Bill of Rights Act.[36] The court recognized that unlike cities and counties, school districts do not have provision of police protection as an essential and basic function. Thus, the court held that providing police protection is not mandated for school districts unless there is a concrete showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.

> ...the "necessity" that is required is facing " 'certain and severe penalties' such as 'double ... taxation' or other 'draconian' consequences." [Citation omitted.] That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences.
>
> [¶][¶]
>
> ...the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.[37]

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[33] *Id.* at p. 731.

[34] Education Code section 72330.

[35] *Kern High School Dist., supra,* 30 Cal.4th 727, 754.

[36] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355.

[37] *Id.* at page 1367.

There is no evidence in the record that community college districts are practically compelled to establish their own police or security departments and comply with the downstream requirements imposed by the test claim statutes on "police or security departments."

Accordingly, the state has not mandated school district or community college district "police or security departments" to receive child abuse and neglect reports pursuant to Penal Code section 11165.9 and to engage in follow-up reporting and investigation activities required by Penal Code sections 11166.2, 11168, 11169, 11170; Title 11, California Code of Regulations, section 903; and the "Suspected Child Abuse Report" Form SS 8572, and the "Child Abuse Investigation Report" Form SS 8583. Thus, school districts and community college districts are not entitled to reimbursement for the activities required of "police departments."

Activities performed by "a law enforcement agency"

Furthermore, some of the cross-reporting and notification activities required in the test claim statutes are imposed generally on "a law enforcement agency," without excluding "a school district police or security department" from the requirements. The activities required of "law enforcement agencies" are:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)
- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. (Pen. Code, § 11166, subd. (i), now subd. (k).)
- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

Staff finds that a broader reading of "law enforcement agency" is warranted here, using a basic tenet of statutory construction: "When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that

the Legislature intended a difference in meaning."[38] Thus, by using the broader phrase of "law enforcement agency," without excluding school district police or security departments" from the requirements bulleted above, the Legislature intended a different result. While now, pursuant to the definition expressed in section 11165.9, a K-12 school district police or security department has no mandatory duties of child abuse investigation, nor are they the proper recipient of mandated reports, all law enforcement agencies, including those maintained by K-12 school districts and community college districts, may receive reports of "known or suspected instances of child abuse" that require notification and cross-reporting to the appropriate agencies. Applying this rule does not lead to an absurd result because the legislative intent behind the Child Abuse and Neglect Report Act is to protect children from abuse and neglect,[39] a duty that is furthered by the broadest reading of the cross-reporting requirements.

However, staff finds that the notification and cross-reporting activities required by Penal Code sections 11166, 11166.9 (now Pen. Code, § 11174.34), and 11170 are not mandated by the state. School districts and community college districts are authorized, but not required by the Education Code to employ peace officers.[40] Thus, the underlying decision to employ peace officers is discretionary and not legally compelled by the state. Therefore, the activities required by the test claim statutes of school district and community college district law enforcement agencies are, likewise, not legally compelled by the state. Moreover, there is no concrete evidence in the record that school districts and community college districts are practically compelled to maintain their own law enforcement agencies and not rely on the general law enforcement resources of cities and counties.

Accordingly, staff finds that the state has not mandated school district and community college district law enforcement agencies to engage in the notification and cross-reporting activities required by Penal Code sections 11166, 11166.9 (now Pen. Code, § 11174.34), and 11170. Thus, school districts and community college districts are not entitled to reimbursement for the activities required of "law enforcement agencies."

(B) Mandated Reporting of Child Abuse and Neglect

Penal Code Section 11164:

The test claim pleadings include Penal Code section 11164.[41] Subdivision (a) states that the title of the article is the "Child Abuse and Neglect Reporting Act," and subdivision (b) provides that "[t]he intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."

In *Jacqueline T. v. Alameda County Child Protective Services* (2007) 155 Cal.App.4th 456, 470, the court examined Penal Code section 11164 and found "the statute imposed no mandatory duty on County or Employees. Rather, the statute merely stated the Legislature's "intent and purpose" in enacting CANRA, an article composed of over 30 separate statutes." In reaching

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[38] *People v. Trevino* (2001) 26 Cal.4th 237, 242.

[39] Penal Code section 11164, subdivision (b).

[40] Education Code sections 38000 and 72330.

[41] Added by Statutes 1987, chapter 1459; amended by Statutes 2000, chapter 916.

this conclusion, the court relied on reasoning from *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639 [*Terrell R.*]:

> An enactment creates a mandatory duty if it requires a public agency to take a particular action. (*Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.) An enactment does not create a mandatory duty if it merely recites legislative goals and policies that must be implemented through a public agency's exercise of discretion. (*Ibid.*) The use of the word "shall" in an enactment does not necessarily create a mandatory duty. (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 910-911, fn. 6 [136 Cal.Rptr. 251, 559 P.2d 606]; *Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.)

Staff also finds this statement of law persuasive, and the *Jacqueline T.* court's legal finding on the nature of section 11164 as merely an expression of legislative intent is directly on point with the case at hand. Therefore, staff finds that Penal Code section 11164 does not mandate a new program or higher level of service on school districts.

Penal Code Sections 11165.9, 11166, and 11168, Including Former Penal Code Section 11161.7:

Penal Code section 11166,[42] subdivision (a), as pled, provides that "a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." Penal Code section 11165.9 requires reports be made "to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department." Penal Code section 11168[43] (derived from former Pen. Code, § 11161.7)[44] requires the written reports to be made on forms "adopted by the Department of Justice."

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes

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[42] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[43] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

[44] Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

1974, chapter 348, required specified medical professionals, public and private school officials and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

> (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department;[45] or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

The list of "mandated reporters," as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,[46] includes all of the original reporters and now also includes teacher's aides, other classified school employees, as well as numerous other public and private employees and professionals.

Staff finds that the duties alleged are not required of school districts, but of mandated reporters as individual citizens. The statutory scheme requires duties of individuals, identified by either their profession or their employer, but the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources. Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:[47]

> Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a

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[45] Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

[46] Added by Statutes 2000, chapter 916.

[47] This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

Failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated reporter to criminal liability. This criminal penalty applies to mandated reporters as individuals and does not extend to their employers. In addition, under Penal Code section 11172, mandated reporters are granted immunity as individuals for any reports they make: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and *this immunity shall apply even if* the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect *outside of his or her professional capacity or outside the scope of his or her employment.*" [Emphasis added.] Therefore, staff finds that the duties are required of mandated reporters as individuals, and there is no new program or higher level of service imposed on school districts for the activities required of mandated reporters.

The draft staff analysis issued in October 2007 discussed the fact that article XIII B, section 6 does not require reimbursement for "[l]egislation defining a new crime or changing an existing definition of a crime."[48] In comments dated November 7, 2007, the claimant states that the analysis:

> has misconstrued the constitutional exception and has also ignored Government Code Section 17556, subdivision (g), which excludes reimbursement "only for that portion of the statute relating directly to the enforcement of the crime or infraction." The test claim alleges reimbursable activities for the mandated reporters to report observed child abuse and neglect. The reporting is compelled both by affirmative law (Section 11165.1) and by penal coercion (Section 11166). The test claim does not allege mandated costs to enforce the crime of failure to report which would be excluded by subdivision (g).

The pertinent portion of Government Code section 17556 follows:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following: ¶...¶
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> (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

The Government Code section 17556, subdivision (g) "crimes exception" to finding costs mandated by the state only applies after finding that a new program or higher level of service has been imposed. Here, staff finds that the duties alleged are required of mandated reporters as individual citizens, and no new program or higher level of service has been imposed directly on school districts. Therefore, staff finds that Penal Code sections 11165.9, 11166, and 11168, (including former Penal Code section 11161.7), do not mandate a new program or higher level of service on school districts for activities required of mandated reporters.

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[48] California Constitution, article XIII B, section 6, subdivision (a)(2).

Definitions: Penal Code Sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program.

Penal Code section 11165.6,[49] as pled, defines child abuse as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1[50]), neglect (§ 11165.2[51]), willful cruelty or unjustifiable punishment (§ 11165.3[52]), unlawful corporal punishment or injury (§ 11165.4[53]), and abuse or neglect in out-of-home care (§ 11165.5[54]). The test claim also alleges the statute defining the term child (§ 11165[55]).

While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with any of the other test claim statutes, they mandate a new program or higher level of service by increasing the scope of required activities within the child abuse and neglect reporting program.

Penal Code section 11165 defines the word child as "a person under the age of 18 years." This is consistent with prior law, which has defined child as "a person under the age of 18 years" since the child abuse reporting law was reenacted by Statutes 1980, chapter 1071. Prior to that time, mandated reporting laws used the term minor rather than child. Minor was not defined in the Penal Code, but rather during the applicable time the definition was found in the Civil Code, as "an individual who is under 18 years of age."[56] Thus no substantive changes have occurred whenever the word child has been substituted for the word minor.

Former Penal Code section 11161.5 mandated child abuse reporting when "the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by

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[49] As repealed and reenacted by Statutes 2000, chapter 916.

[50] Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287; derived from former Penal Code section 11165 and 11165.3.

[51] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

[52] Added by Statutes 1987, chapter 1459.

[53] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

[54] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

[55] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

[56] Former Civil Code section 25; reenacted as Family Code section 6500 (Stats. 199, ch. 162, operative Jan. 1, 1994.)

the terms of Section 273a has been inflicted upon the minor." The prior law of Penal Code section 273a[57] follows:

> (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.
>
> (2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

Staff finds that the definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

Staff finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled. Claimant's November 7, 2007 comments dispute this and state: "To the contrary, the new CANRA definitions are each precise, specifically enumerated, and evolved over time by numerous amendments to the code." Staff agrees, but this does not mean that the amended definitions have created a higher level of service over the previous definitions of reportable child abuse and neglect. In *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, the court stated a fundamental rule of statutory construction: "'Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " [Citation omitted.] That purpose is not necessarily to change the law. 'While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.'" Staff finds that the same acts of abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law.

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[57] Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the criminal penalties amended by Statutes 1976, chapter 1139, Statutes 1980, chapter 1117, Statutes 1984, chapter 1423, Statutes 1993, chapter 1253, Statutes 1994, chapter 1263, Statutes 1996, chapter 1090, and Statutes 1997, chapter 134, as pled, but the description of the basic crime of child abuse and neglect remains good law.

Penal Code section 11165.1 provides that sexual abuse, for purposes of child abuse reporting, includes sexual assault or sexual exploitation, which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and "obscene sexual conduct." Prior law required reporting of sexual molestation, as well as "unjustifiable physical pain or mental suffering."

Sexual molestation is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone "who annoys or *molests* any child under the age of 18." In a case regularly cited to define "annoy or molest," *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

> The primary purpose of the above statute is the 'protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.' (*People v. Moore*, *supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words 'annoy' and 'molest' are synonymously used (Words and Phrases, perm. ed., vol. 27, 'molest'); they generally refer to conduct designed 'to disturb or irritate, esp. by continued or repeated acts' or 'to offend' (Webster's New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to 'offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.' (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation which is forbidden is 'not concerned with the state of mind of the child' but it is 'the objectionable acts of defendant which constitute the offense,' and if his conduct is 'so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would 'annoy or molest' within the purview of' the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

By use of the general term sexual molestation in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of "offenses against children, [with] a connotation of abnormal sexual motivation." Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that neglect, as used in the Child Abuse and Neglect Reporting Act, includes situations "where any person having care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered," "*including* the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care." Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child "in such situation that its person or health may be endangered," as described in prior law, above. Thus, the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where "[a]ny person ... willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering." The current definition of willful cruelty or unjustifiable punishment of a child, found at Penal Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.[58]

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[58] Penal Code section 273a distinguishes between those "circumstances or conditions likely to produce great bodily harm or death" (felony), and those that are not (misdemeanor).

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits "any cruel or inhuman corporal punishment or injury resulting in a traumatic condition." Again, prior law required reporting of any non-accidental injuries, willful cruelty, and "unjustifiable physical pain or mental suffering," which encompasses all of the factors described in the definition for reportable unlawful corporal punishment or injury. The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines abuse or neglect in out-of-home care as all of the previously described definitions of abuse and neglect, "where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency." Prior law required reporting of abuse by "any person," and neglect by anyone who had a role in the care of the child.[59] Thus any abuse reportable under section 11165.5 would have been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to abuse or neglect in out-of-home care from the general definition of child abuse and neglect at Penal Code section 11165.6. Therefore, staff finds that Penal Code sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service on school districts by increasing the scope of child abuse and neglect reporting.

(C) Training Mandated Reporters

Penal Code Section 11165.7:

The claimant is also requesting reimbursement for training mandated reporters based on Penal Code section 11165.7.[60] Penal Code section 11165.7, subdivision (a), now includes the complete list of professions that are considered mandated reporters of child abuse and neglect; subdivision (b), as pled, provides that volunteers who work with children "are encouraged to obtain training in the identification and reporting of child abuse." The code section continues, as amended by Statutes 2001, chapter 754:

> (c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
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> (d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report

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[59] *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: "No special meaning attaches to this language [care or custody] "beyond the plain meaning of the terms themselves. The terms 'care or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)"

[60] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754.

to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

In 2004, Penal Code section 11165.7, subdivision (c), was amended to provide that all employers of mandated reporters are "strongly encouraged" to provide training:

> (c) Employers are *strongly encouraged* to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5 [each mandated employee shall sign a statement that have knowledge and will comply with the provision of the Act]. (Emphasis added.)

The 2004 amendment to section 11165.7 left subdivision (d) unchanged.[61]

Claimant alleges a reimbursable state mandate for school districts: "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided."[62] In comments on the draft staff analysis, dated November 7, 2007, the claimant states: "The requirement to train staff derives from the same form of legislative imperative ("shall") as subdivision (c), which states that "districts which do not train the employees ... shall report ... the reasons training is not provided." ... Both training and reporting are required as mutually exclusive parts of Section 11165.7."

DSS argues there is no express duty in the test claim statute for school districts, as employers or otherwise, to provide training to mandated reporters. On page 3 of the November 25, 2002 comments, DSS states:

> Claimant also asserts that Penal Code Section 11165.7 imposes mandated reporter training. (See Test Claim, page 123 lines 16-23) However, Claimant conceded that the training is optional, and can be avoided if it reports to the State Department of Education why such training was not provided. The form of the report is not specified in law. Therefore, the report can be transmitted orally or electronically, at no or de minimis cost to Claimant. Moreover, Claimant has not provided any facts to support its view that activities associated with such a report are in excess of that which was required under law in 1975.

In *City of San Jose v. State of California,* the court clearly found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[63] The court concluded "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting

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[61] Statutes 2004, ch. 842 (Sen. Bill. No. 1313).

[62] Test Claim Filing, page 123.

[63] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

from political decisions on funding priorities."[64] No mandatory language is used to require employers to provide mandated reporter training. The phrase "strongly encouraged" is not mandatory language, but an expression of legislative intent.[65] Therefore, based on the plain language of the statute,[66] staff finds that Penal Code section 11165.7 does not mandate a new program or higher level of service upon school districts for providing training to mandated reporter employees.

However, if mandated reporter training is not provided, the code section requires that school districts "shall report to the State Department of Education the reasons why." DSS argues that the reporting should be de minimis, and therefore not reimbursable. Mandates law does not support this conclusion, however. The concept of a de minimis activity does appear in mandates case law – most recently in *San Diego Unified School Dist. v. Commission on State Mandates* and *California School Boards Association v. State of California (CSBA)*, which describe a de minimis standard as it applies in a situation where there was an existing non-reimbursable program created by an initiative or federal law, but the state then adds more, by articulating specific procedures that are not expressly set forth in the existing law.[67] Challenged state rules or procedures that are intended to implement an existing law—and whose costs are, in context, de minimis—should be treated as part and parcel of the federal mandate.

The context described by the courts in *San Diego* and *CSBA*, however, does not have a parallel here. The activity of reporting to the State Department of Education on the lack of training is a new activity, severable and distinct from any other part of the Child Abuse and Neglect Reporting Act, and is not implementing a larger, non-reimbursable program.

In addition, Government Code section 17564 provides the minimum amount that must be claimed in either a test claim or claim for reimbursement. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim. A declaration of costs incurred was also submitted by the San Jose Unified School District.[68] Therefore, the test claim satisfies the initial burden of demonstrating that school districts have incurred the minimum increased costs for the test claim statute. Staff notes that Government Code section 17564 now requires that any reimbursement claims submitted must exceed $1000, and this will apply for any future reimbursement claims filed pursuant to this test claim.

Finally, there must be a determination of what is meant by "school districts" in the context of Penal Code section 11165.7 – did the Legislature intend that community college districts be included in this requirement? "School district" is not defined in this code section or elsewhere in CANRA, nor is there a general definition to be used in the Penal Code as a whole. Rules of

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[64] *Id.* at page 1817.

[65] *Terrel R., supra,* 102 Cal.App.4th 627, 639.

[66] "'[W]hen interpreting a statute we must discover the intent of the Legislature to give effect to its purpose, being careful to give the statute's words their plain, commonsense meaning.'" [Citation omitted.] *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261.

[67] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 888; *CSBA v. State of California* (2009) 171 Cal.App.4th 1183, 1216-1217.

[68] Test Claim Filing, Exhibit 1.

statutory construction demand that we first look to the words in context to determine the meaning.[69]

The report is required to be made to the State Department of Education, which generally controls elementary and secondary education. The State Department of Education is governed by the Board of Education. Education Code section 33031 provides: "The board shall adopt rules and regulations not inconsistent with the laws of this state (a) for its own government, (b) for the government of its appointees and employees, (c) for the government of the day and evening elementary schools, the day and evening secondary schools, and the technical and vocational schools of the state, and (d) for the government of other schools, *excepting* the University of California, the California State University, and *the California Community Colleges*, as may receive in whole or in part financial support from the state."

A community college district generally provides post-secondary education, and the controlling state organization is the California Community Colleges Board of Governors.[70] Particularly since the reorganization of the Education Code by Statutes 1976, chapter 1010, there are growing statutory distinctions between K-12 "school districts" and "community college districts" throughout the code, including the Penal Code.[71] While these factors alone are not controlling, the fact that the training reporting requirement is limited to "school districts" and not all public and private schools, or even all employers of mandated reporters, is indication that the legislative intent was limited, and that school districts should be interpreted narrowly. Therefore, staff finds that the term "school districts" refers to K-12 school districts and is exclusive of community college districts in this case.

Thus, staff finds that Penal Code section 11165.7, subdivision (d), mandates a new program or higher level of service on K-12 school districts, as follows:

- Report to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws.

(D) Investigation of Suspected Child Abuse Involving a School Site or a School Employee

Penal Code Sections 11165.14 and 11174.3:

Penal Code section 11165.14,[72] addresses the duty of law enforcement to "investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite."

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[69] "Statutory language is not considered in isolation. Rather, we 'instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.'" *Bonnell v. Medical Bd. of California, supra,* 31 Cal.4th 1255, 1261.

[70] Education Code section 70900 et seq.

[71] Penal Code section 291, 291.1 and 291.5 set up separate statutes for law enforcement informing public schools, private schools, and community college districts, respectively when a teacher, instructor or other employees are arrested for sex offenses.

[72] Added by Statutes 1991, chapter 1102, and amended by Statutes 2000, chapter 916.

The test claim alleges that Penal Code section 11165.14 mandates school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site."[73]

DSS argues Penal Code section 11165.14 does not impose a duty on its face for school districts to cooperate with and assist law enforcement agencies.

In comments dated November 7, 2007, the claimant further argues: "Nearly every school district employee is a mandated reporter of child abuse and subject to criminal punishment for failure to comply in this duty. Therefore, the district and its employees are practically compelled to participate in the investigation."

Staff finds that the plain language of Penal Code section 11165.14 does not require school district personnel to engage in the activities of assisting and cooperating with investigation of complaints as alleged by the claimant. Further, there is no evidence in the record that section 11165.14 "practically compels" the participation of a school district or its employees in a child abuse investigation, in a manner that results in a reimbursable state mandated program. The imposition of a reimbursable state mandate through "practical compulsion" is not described in the California Constitution or in statute. The California Supreme Court discussed the issue in *Kern High School Dist., supra,* 30 Cal.4th 727, 731, stating:

> Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion-for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program-claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs "too good to refuse"-even though, as a condition of program participation, they have been forced to incur some costs.

Here, there is no substantial penalty or loss of funding at issue, and no alternative legal rationale is apparent to explain why there is "practical compulsion" to engage in the test claim activities alleged to be required by section 11165.14. The duties of individual mandated reporters are described in section 11166, not section 11165.14, and while this may be augmented by an underlying civic duty to cooperate with a law enforcement investigation,[74] there is no investigatory duty imposed by statute on the mandated reporter. The Crime and Violence Prevention Center of the California Attorney General's Office issues a publication called "Child

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[73] Test Claim Filing, page 123.

[74] *People v. McKinnon* (1972) 7 Cal.3d 899, 915, at footnote 6, the Court noted: "As concluded by the President's Commission on Law Enforcement and Administration of Justice: "That every American should cooperate fully with officers of justice is obvious ... [T]he complexity and anonymity of modern urban life, the existence of professional police forces and other institutions whose official duty it is to deal with crime, must not disguise the need - far greater today than in the village societies of the past - for citizens to report all crimes or suspicious incidents immediately; to cooperate with police investigations of crime; in short, to 'get involved.'" (The Challenge of Crime in a Free Society, Report by the President's Commission on Law Enforcement and Administration of Justice (1967) p. 288.)"

Abuse: Educator's Responsibilities," which is designed to "assist educators in determining their reporting responsibilities."[75] In the 6th edition, revised January 2007, at page 13, the document states:

> [S]chool personnel who are mandated to report known or reasonably suspected instances of child abuse play a critical role in the early detection of child abuse. Symptoms or signs of abuse are often first seen by school personnel. Because immediate investigation by a law enforcement agency, or welfare department may save a child from repeated abuse, school personnel should not hesitate to report suspicious injuries or behavior. **Your duty is to report, not investigate.** [Emphasis in original.]

Based upon all of the above, staff finds neither legal nor practical compulsion has been imposed by Penal Code section 11165.14 for school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." Therefore, staff finds that Penal Code section 11165.14 does not mandate a new program or higher level of service on school districts.

Claimant further alleges a reimbursable state mandate is imposed by Penal Code section 11174.3;[76] the code section, as pled, follows:

> (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.
>
> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with

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[75] <http://safestate.org/documents/CA_Child_Abuse_Ed_Respon_2007_ADA.pdf> as of November 15, 2007.

[76] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916.

the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

Claimant alleges that the mandated activities include notifying "the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." DSS argues that the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim."

As discussed above, the court in *City of San Jose, supra,* found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[77] Penal Code section 11174.3 states: "A staff member selected by a child may decline the request to be present at the interview." Thus, staff finds that the optional nature of a school staff member's attendance at the investigative interview does not impose a reimbursable state-mandated program on school districts. The claimant's November 7, 2007 comments argue:

> The DSA ignores that the district incurs costs for this new activity as a result of two independent choices which are not controlled by the school employer, but by the persons making the choice. Thus, if a student requests (first independent choice) a district employee to participate and the district employee consents (second independent choice), costs are incurred by the district (and not the persons who made the choices).

Accepting this as true, there is still no evidence of either a higher level of service or actual increased costs mandated by the state in order for a school staff member to attend the child abuse investigation interview. Penal Code section 11174.3 states if the district employee opts "to be present at the interview," the interview "*shall be held at a time during school hours when it does not involve an expense to the school.*" Thus, the only requirement on the school district regarding the staff member's presence at an investigative interview is to *not* incur costs. In *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1285, the court found: "The presence of these references to reimbursement for lost revenue in article XIII supports a conclusion that by using the word "cost" in section 6 the voters meant the common meaning of cost as *an expenditure or expense actually incurred.*"

However, staff does identify that there is a new activity plainly required by the test claim statute for a school representative to inform the selected member of the staff of the requirements of Penal Code section 11174.3 prior to the interview. In order to identify the eligible claimants for this activity, there must be a determination of whether there was legislative intent that the terms "school" or "school districts," as used in this code section includes community colleges. In *Delaney v. Baker* (1999) 20 Cal.4th 23, 41-42, the Court found:

> It is, of course, "generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in

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[77] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

another part of the same statute." (*People v. Dillon* (1983) 34 Cal.3d 441, 468 [194 Cal.Rptr. 390, 668 P.2d 697].) But that presumption is rebuttable if there are contrary indications of legislative intent.

There are no indications of legislative intent to suggest that community college districts were intended to be included in the use of the terms "school" or "school district" within Penal Code section 11174.3; therefore the terms are given the same meaning as determined for Penal Code section 11165.7, above, as excluding community college districts.

Therefore, based on the plain language of the statute, staff finds that Penal Code section 11174.3 mandates a new program or higher level of service on K-12 school districts for the following activity:

- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school.

(E) Employee Records

Penal Code Section 11166.5:

Penal Code section 11166.5, [78] subdivision (a), as pled, follows, in pertinent part:

> (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations

[78] Added by Statutes 1984, chapter 1718, and amended by Statutes 1985, chapters 464 and 1598, Statutes 1986, chapter 248, Statutes 1987, chapter 1459, Statutes 1990, chapter 931, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapter 1081, Statutes 2000, chapter 916, and Statutes 2001, chapter 133 (oper. Jul. 31, 2001.)

under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.[79]

¶...¶

The signed statements shall be retained by the employer or the court [regarding child visitation monitors], as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

Subdivisions (b) through (d) are specific to the state, or concern court-appointed child visitation monitors, and are not applicable to the test claim allegations.

The claimant alleges that the code section requires school districts "[t]o obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties."

DSS argues that the claimant has not offered "any evidence that it was necessary to modify employment forms or that employment forms were so modified." Staff notes that determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law.[80] A properly filed test claim alleging a new program or higher level of service was mandated by statute(s) or executive order(s), including declarations that the threshold level of costs mandated by the state were imposed pursuant to Government Code sections 17514 and 17564, is generally sufficient for the Commission to reach a legal conclusion on the merits.

Staff finds that the basic requirements of section 11166.5, subdivision (a) were first added to law by Statutes 1984, chapter 1718. The law affects all employers—both public and private—of what are now termed "mandated reporters." Currently, the list of mandated reporters includes a wide variety of professions, designed to encompass nearly anyone who may come into contact with children, or otherwise may have knowledge of suspected child abuse and neglect, through the course of their work. Just a few examples from this list: essentially all medical and counseling professionals, including interns; all clergy and those that keep their records; any licensee, administrator, or employee of a licensed community care or child day care facility; and

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[79] The amendment by Statutes 2000, chapter 916 removed a detailed statement of the content Penal Code section 11166 that was to be included in the form provided by the employer – and instead provides more generically that "The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166." Staff finds that the essential content requirements for the form remain the same.

In addition, Statutes 2000, chapter 916 first added the requirement that "The employer shall provide a copy of Sections 11165.7 and 11166 to the employee."

[80] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

commercial film and photographic print processors and their employees. Such individuals may be employed by diverse private non-profit or for-profit employers including medical groups, hospitals, churches, synagogues and other places of worship, small in-home daycares as well as large childcare centers, and any retail store with a photo lab.

The California Supreme Court in *County of Los Angeles v. State of California, supra,* found that "new program or higher level of service" addressed "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[81] In *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545-1546, the court applied the reasoning to a claim for mandate reimbursement for elevator safety regulations that applied to all public and private entities.

> County acknowledges the elevator safety regulations apply to all elevators, not just those which are publicly owned. FN4 As these regulations do not impose a "unique requirement" on local governments, they do not meet the second definition of "program" established by *Los Angeles.*
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> FN4. An affidavit submitted by State in support of its motion for summary judgment established that 92.1 percent of the elevators subject to these regulations are privately owned, while only 7.9 percent are publicly owned or operated.
>
> Nor is the first definition of "program" met. ¶ ...¶ In determining whether these regulations are a program, the critical question is whether the mandated program carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not "a governmental function of providing services to the public." FN5
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> FN5. This case is therefore unlike *Lucia Mar, supra,* in which the court found the education of handicapped children to be a governmental function (44 Cal.3d at p. 835, 244 Cal.Rptr. 677, 750 P.2d 318) and *Carmel Valley, supra,* where the court reached a similar conclusion regarding fire protection services. (190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795.)

In this case, the statutory requirements apply equally to public and private employers of any individuals described as mandated reporters within CANRA. The alternative prong of demonstrating that the law carries out the governmental function of providing a service to the public is also not met. In this case, staff finds that informing newly-employed mandated reporters of their legal obligations to report suspected child abuse or neglect is not inherently a *governmental function* of providing service to the public, any more than providing safe elevators.

The claimant, in comments filed November 7, 2007, argues that this is not a law of general application, and "[t]he mandated reporting system is the basis of a distinctly governmental and penal system of investigation of child abuse, which is not within the purview of private persons or entities." While the investigation and prosecution of alleged child abuse and neglect is certainly the role of governmental entities, defined mandated reporters have not been confined to the realm of government. Rather the role has been extended to a vast and diverse group of individuals who, through their work, may encounter suspected child abuse and neglect. Claimant

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[81] *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56.

offers no factual evidence to support the proposition that "the absolute number of persons who are mandated reporters would probably be government employees as the super majority."[82] Penal Code section 11166.5 places a duty on all employers of mandated reporters listed in section 11165.7—this duty applies whether the employer is private or public. Therefore, staff finds that Penal Code section 11166.5 does not mandate a new program or higher level of service on school districts.

Issue 3: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564. A declaration of costs incurred was also submitted by the San Jose Unified School District.[83] Government Code section 17556 provides exceptions to finding costs mandated by the state. Staff finds that none have applicability to deny this test claim. Thus, for the activities listed in the conclusion below, staff finds accordingly that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

CONCLUSION

Staff concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)[84]
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

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[82] Claimant Comments, November 7, 2007, page 3.

[83] Test Claim Filing, Exhibit 1.

[84] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.

> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)[85]

The period of reimbursement for these activities begins July 1, 2000.

Staff further concludes that the test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim for K-12 school districts.

[85] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.

Original List Date: 7/3/2002
Last Updated: 10/16/2007
List Print Date: 05/22/2009
Claim Number: 01-TC-21
Issue: Child Abuse and Neglect Reporting

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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Exhibit M

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June 22, 2009

Paula Higashi, Executive Director
Commission on State Mandates
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RE: 01-TC-21 Child Abuse and Neglect Reporting (CANR)
San Bernardino Community College District, Claimant
Consolidated with:
00-TC-22 Child Abuse and Neglect (ICAN) Investigative Reports

Dear Ms. Higashi:

I have received the Commission Draft Staff Analysis (DSA) dated May 22, 2009, to which I respond on behalf of the test claimant.

PART I DUTIES IMPOSED ON DISTRICT POLICE DEPARTMENTS AND LAW ENFORCEMENT AGENCIES

College Police and Security Departments

Penal Code Section 11165.9 specifically excludes "district" police or security departments, an exclusion that is sufficiently broad to exclude any K-14 police organization from the duties enumerated in Sections 11165.9, 11166.2, 11168, 11169, et al., listed in the DSA (14-16). The DSA (19) concludes that K-12 police departments are not required to perform these activities and community college police departments are required, but not "mandated," to do so for the purpose of reimbursement. However, the court cases cited in the DSA (19, 20) for this conclusion are not factually similar or legally determinative.

The school districts in *Kern* could have discontinued the variously funded program advisory committees to avoid the mandated agenda requirements. Police or peace officer employees are not an "underlying program," but an employment classification. It is the duties performed that implement the mandate program that are reimbursed, not the type of employee. The DSA inappropriately extends the holding of *Kern* to this

different fact situation. Public school districts are generally not compelled to hire specific types of employees, and the job classification or nature of duties performed has never been a disqualification for reimbursement. Other public school employees have professional and statutory responsibilities that are reimbursed by the state in other mandates and are not excluded from reimbursement because they are not compulsory employees. For example, school counselors implement the currently reimbursed mandate program of Pupil Suspensions, Expulsions and Expulsion Appeals, although these same duties are also implemented by employees who are not counselors. School nurses implement the currently reimbursed programs of Immunization Records, Immunization Record: Hepatitis B, and Scoliosis Screening, although these same duties are also implemented by employees who are not counselors.

In *City of Merced*, the court concluded that the underlying choice of eminent domain was not a mandated method to obtain property for city use. In this claim, the test is not that college districts are compelled, or even choose, to operate a police department or hire peace officers, but if they do, they must comply with the Penal Code requirements to respond to allegations of child abuse and neglect as described in the CANR mandate. There is no preceding discretionary choice of methods here for the district, only the statutory duties of certain employees. Further, assuming that a college district would discontinue its police department or employment of peace officers for the sole purpose of avoiding this mandate, those duties would be performed by local government police agencies, and the state would reimburse those tasks to that agency.

Law Enforcement Agencies

The DSA (21) enumerates the duties of "law enforcement agencies" that do not statutorily exclude school or college police or security departments. The DSA (22) properly concludes that the Legislature's use of this term was intentional. Notwithstanding, the DSA (22) concludes that there is no mandated reimbursement because the "underlying decision" to hire police or peace officers is discretionary, an application of the *Kern* and *Merced* reasoning, which is not factually relevant as described above.

Practical Compulsion to Operate a Police Department

Kern and *Merced* failing to be determinative of the facts in this test claim, the remaining objection is the standard imposed by the findings in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 (hereafter referred to as the POBRA 2009 decision). The Appeals Court concluded that there was nothing in the record before the court to show that school and college districts are practically compelled to exercise their authority to hire peace officers as "the only reasonable means to carry out their core mandatory functions," that is, school safety, and there is no mandatory duty to provide police services within their jurisdiction.

The conclusion in POBRA 2009 is distinguishable because the mandate that is the subject of that case is the due process required when disciplining peace officers that is different and in excess of other public classified employees that only applies by virtue of the statutory status of peace office employees. It was never stated that employee due process was a core or basic function of school and college districts. However, it can be directly concluded that the Penal Code requirements for CANR are within the scope of public and school safety, to prevent the abuse and neglect of children by reporting its occurrence and investigating its causes.

The facts presented in this test claim are not analogous to the facts that determined the cases cited by the Commission. School and college district police and peace officers are classifications of employees performing statutory CANR functions that are relevant to their basic and mandatory school safety responsibility. CANR is not a personnel due process mandate that is merely incidental or consequential to the employee's job classification or legislated status.

PART II. MANDATED REPORTING OF CHILD ABUSE AND NEGLECT

Penal Code Sections 11165.9, 11166, and 11168

The DSA (24) concludes that the duties of mandated reporters accrue to the reporters as "individual citizens" rather than employees of school and college districts. That distinction is not one of the exceptions to finding costs mandated by state listed in Government Code Section 17556. The DSA (24) asserts that "the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources." There are no statutory or court decisions cited that make these alleged distinctions within the scope of Section 17556. Notwithstanding, the public school mandated reporters are mandated reporters by virtue of their employment, that is, public school nurses and public school teachers are school nurses and school teachers because they are employed by school districts. The services provided by public school employees are not performed for their individual or personal benefit, but to provide service to students, which is the statutory duty of the school district employer. The employer resource being consumed is the employee time, compensated by the employer, and such costs have always been reimbursable when the staff time implements a reimbursable mandate.

The DSA (24, 25) notes that the failure to report subjects the mandated reporter to misdemeanor punishment as an individual and thus the public school employer is not subject to punishment. That distinction is not one of the exceptions to findings of costs mandated by state listed in Government Code Section 17556. In this test claim, the DSA does not reach the issue of whether Government Code Section 17556, subdivision (g), regarding new criminal offenses applies because the DSA has already concluded that the mandated reporting duty is individual and not a new program or higher level of service imposed on the public school agency. The individual misdemeanor penalty and subdivision (g) new criminal infraction issues are not ones of first impression. The

issues were included in the Notification to Teachers: Pupils Subject to Suspension or Expulsion mandate approved twice by the Commission, where it was concluded these issues were not determinative of the Government Code Section 17514 issues of a new program or increased level of service.

Definitions of Child Abuse and Neglect

The test claim alleges that the enumeration of additional incidents of child abuse and neglect in the statutes after 1974 results in a higher level of service since each new definition results in a need to report. The DSA (27) asserts that Penal Code Section 273a, enacted well before 1975, is "very broad," apparently sufficiently broad as to "encompass every part of the statutory definitions of child abuse and neglect [added after 1974], as pled." The DSA (27) cites *Williams v Garcetti* for the proposition that a change in language is not necessarily a change in the law, and then concludes that "the same acts of abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law." Penal Code Section 11161.5 (added by Chapter 576, Statutes of 1963), the pre-1975 reporting mandate, at subdivision (a), requires reporting incidents of physical injury that appear to have been intentionally inflicted, sexual molestation, or the injuries listed in Section 273a which are intentional acts and not within the scope of child neglect as defined in the statutes added after 1974. The DSA (28) relies on general definitions in other code sections to bootstrap child neglect into the scope of Section 11161.5, a practice contrary to the statutory preference for the specific over the general when determining the meaning of new or amended code sections. The Legislature made numerous and specific additions to Section 11161.5 after 1974 for the specific purpose of expanding the scope of reportable incidents. Each new reportable incident is an additional administrative task for public school employees and thus a higher level of service.

PART III. TRAINING MANDATED REPORTERS

This test claim was filed in June 2002. Penal Code Section 11165.7, as last amended by Chapter 133, Statutes of 2001, stated:

> (b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.
> (c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
> (d) School districts that do not train ~~the~~ their employees specified in subdivision (a) in the duties of ~~child care custodians~~ mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

Subdivision (b) clearly indicates that training of volunteers is "encouraged." However, subdivision (c) clearly indicates that there are training duties "required" by this mandate for school district employees. We can conclude that the Legislature made this distinction having utilized separate subdivisions and specific language. Strangely, the DSA (30) cites a 2004 amendment that adds the words "employers are strongly encouraged" to provide training to assert the proposition that training is "plainly discretionary." This is a distinctive change in the language in the later statute. It is plainly apparent that the possibility that training school employees was discretionary did not exist until the later amendment of Section 11165.7. At the time the test claim was filed, subdivision (c) stated that training duties were imposed for school district employees by CANR. The fact that sudivision (d) required school districts that did not train employees to report the reasons to the State Department of Education, does not exempt reimbursement of those school districts that did provide training. Neither of the two subdivisions is contingent upon the others.

PART IV. INVESTIGATION OF SUSPECTED CHILD ABUSE INVOLVING THE SCHOOL DISTRICT

Penal Code Section 11165.14 addresses the duty to investigate allegations against school employees made by parents and others to the school district regarding child abuse incidents that occur at school. This is different from the mandated reporting by school employees of suspected abuse or neglect directly to the relevant police department. The DSA (33) concludes that there is nothing in the plain language of the code section that requires school district personnel to assist in the investigation. The DSA (33, 34) cites a publication of the Attorney General that states the school employee's duty is to report and not investigate. That misses the point. Section 11165.14 is not about mandated reporting by mandated reporters, but the investigation that occurs pursuant to a complaint filed with a school district by a parent or guardian. The parent or guardian is not a mandated reporter and is not complying with CANR when he or she files a complaint with the school district.

The duty of local law enforcement to investigate the complaint arises from the parent complaint, not from a mandated reporter. For that reason, the school employee status as a mandated reporter is not relevant. School district employees need not be legally compelled to respond to a lawful investigation, or coerced, or subject to a penalty. The school district employees would seem to be an essential source of information for incidents that occur on school premises and their cooperation would be the most reasonable method of advancing the investigation. To the extent school district staff time is involved, it is appropriately reimbursable to the school district as a new program or higher level of service that implements a state policy regarding the investigation of child abuse.

PART V. EMPLOYEE RECORDS: ACKNOWLEDGMENTS

Penal Code Section 11166.5, requires employers to obtain a statement from employees that are subject to the mandate reporting law that the employee will comply with the mandated reporting law. The DSA (38) cites *County of Los Angeles* for the conclusion that this code section does not impose requirements that are unique to government and applies generally to all residents and entities in the state. To the contrary, CANR does not apply to all residents and entities in the state, as do payroll tax statutes or elevator safety regulations. This mandate applies to those employers that employ persons who are mandated reporters, and not to those employers that do not.

The requirement to obtain the acknowledgment is conditioned on the employee's status as a mandated reporter. Not all employees are mandated reporters. School districts employ public school teachers to teach students. All other businesses are not school districts. The DSA (38) also asserts that informing newly-employed mandated reporters of their duties is "not inherently a governmental function." CANR is lodged in the Penal Code, is an operation of the state's police power, and no other power is more inherently governmental than the police power.

PART VI. PROCEDURAL DUE PROCESS TO CERTIFY RESPONSES

Title 2, California Code of Regulations, Section 1183.02 states the provisions for the manner in which a test claim may be adjudicated. Subsection (d) of Section 1183.02 explicitly provides:

> The written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief.

The requirement of certification in subsection (d) is made without qualification. The requirement expressed in Title 2, CCR Section 1183.02(d) has no caveat, and the language in that regulation is enforced by the word "shall." Any party responding to a test claim must comply with this section of the Commission's regulations. The test claimant asserts that state agency or any party response that is not properly certified should be excluded. This procedural issue has been raised in many other test claims.

The Department of Finance (DOF) submitted a written response to the test claim on November 26, 2002. That response was not properly certified because the letter was not signed under penalty of perjury with a declaration in accordance with subsection (d). The Department of Finance has been a participant in the mandate adjudication process for twenty-five years. The required certification process is not onerous. It would appear that the Department of Finance is intentionally refusing to comply with the due process requirements of the Commission.

However, the DSA asserts, as has the Commission in previous test claim adjudications, that this active disregard of the regulations by the Department of Finance is inconsequential. The DSA (9; fn. 5) asserts that determining whether a state mandate exists "is a pure question of law." The DSA's conclusion is inconsistent with Section 1183.02(c), which does provide separate standards for the form and content of factual vs. legal assertions. Further, Section 1183.02(c) distinguishes assertions of fact and law which necessarily means that adjudicating a mandate may not always be purely a question of law. Otherwise, there would be no need to provide for the manner in which factual representations were brought before the Commission.

The DSA concludes that the lack of certification is cured or irrelevant because factual allegations made in the Department of Finance response are not relied on by the Commission staff in drafting their recommendation to the Commission. Despite the DSA's claim (9; fn. 5) that "factual allegations raised by a party regarding how a program is implemented are not relied upon by staff," the DSA recites the Department of Finance position from its uncertified response at pages 9-10, and addresses the issues and allegations it raised throughout the discussion.

Section 1183.02, subsection (d), makes no distinction between factual and legal allegations, or whether those allegations are ultimately utilized by the Commission. Section 1183.02(d) mandates that *any* response, opposition, or recommendation filed in response to a test claim have the required certification. The DSA assertion that nonfactual allegations do not need to be certified, or are inconsequential, is not supported by the applicable regulations. Therefore, the DOF comments on the test claim should be removed from the DSA because they were not properly certified when submitted.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

Re: 01-TC-21 San Bernardino Community College District
Child Abuse and Neglect Reporting

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimants. I am 18 years of age or older and not a party to the entitled matter. My business address is 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.

On the date indicated below, I served the attached letter dated June 22, 2009, to Paula Higashi, Executive Director, Commission on State Mandates, to the Commission mailing list updated 10/16/07 for this test claim, and to:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 22, 2009, at Sacramento, California.

Kyle M. Peters

Commission on State Mandates

Original List Date:	7/3/2002	Mailing Information:	Draft Staff Analysis
Last Updated:	10/16/2007		
List Print Date:	05/22/2009	**Mailing List**	
Claim Number:	01-TC-21		
Issue:	Child Abuse and Neglect Reporting		

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Bonnell v. Medical Bd. of California
Cal.,2003.

Supreme Court of California
Harry BONNELL, Plaintiff and Respondent,
v.
MEDICAL BOARD OF CALIFORNIA, Defendant and Appellant.
No. S105798.

Dec. 29, 2003.

Background: After Board of Medical Examiners granted Attorney General a 28-day stay of Board's decision dismissing accusations against physician, the Superior Court of Sacramento County, No. 00CS01234, James Timothy Ford, J., granted physician's request for administrative mandamus, and found that Board's order for reconsideration was void as petition was not filed within 10-day time limit. Board appealed. The Court of Appeal reversed.

Holding: The Supreme Court granted board's petition for review, superseding Court of Appeal's decision, Werdegar, J., held that reconsideration was not filed within time limits.

Reversed.

West Headnotes

[1] **Statutes 361 ⚿181(1)**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In General. Most Cited Cases

Statutes 361 ⚿188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases

When interpreting a statute the court must discover the intent of the Legislature to give effect to its purpose, being careful to give the statute's words their plain, commonsense meaning.

[2] **Statutes 361 ⚿188**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases

Statutes 361 ⚿212.7

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.7 k. Other Matters. Most Cited Cases

Statutes 361 ⚿214

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k214 k. In General. Most Cited Cases

If the language of a statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary, and it is presumed the Legislature meant what it said and the plain meaning of the statute governs.

[3] **Statutes 361 ⚿205**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k205 k. In General. Most Cited Cases

Statutes 361 ⚿206

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k206 k. Giving Effect to Entire

Statute. Most Cited Cases
Statutory language is not considered in isolation, but is interpreted as a whole, so as to make sense of the entire statutory scheme.

[4] **Administrative Law and Procedure 15A ⚷483**

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak480 Rehearing
15Ak483 k. Time for Application or Order for Rehearing. Most Cited Cases
Once petition for reconsideration of agency decision is filed, any stay that is granted can only be "solely for the purpose of considering the petition" and must be limited to 10 days; provision for maximum 30-day stay "for the purpose of filing an application for reconsideration" does not also allow 30-day stay to review petitions that have already been filed. West's Ann.Cal.Gov.Code § 11521(a).
See 9 Witkin, Cal. Procedure (4th ed. (1997) Administrative Proceedings, § 101.

[5] **Statutes 361 ⚷181(2)**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(2) k. Effect and Consequences. Most Cited Cases
Courts avoid any statutory construction that would produce absurd consequences.

[6] **Constitutional Law 92 ⚷2489**

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2489 k. Wisdom. Most Cited Cases
(Formerly 92k70.3(4))
It is not the Supreme Court's function to inquire into the wisdom of underlying legislative policy choices of a statute.

[7] **Statutes 361 ⚷217.4**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.4 k. Legislative History in General. Most Cited Cases
When statutory language is clear and unambiguous, resort to the legislative history is unwarranted.

[8] **Statutes 361 ⚷219(9.1)**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(9) Particular State Statutes
361k219(9.1) k. In General. Most Cited Cases
A purported Medical Board interpretation of statute concerning time limits for filing petition for reconsideration of an agency decision was not entitled to judicial deference; Board's interpretation was incorrect in light of the unambiguous language of the statute, and statute was not a regulation promulgated by the board, but a legislative enactment applicable to a wide range of administrative agencies.

[9] **Statutes 361 ⚷219(1)**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases
The Supreme Court is less inclined to defer to an agency's interpretation of a statute than to its interpretation of a self-promulgated regulation.

***533 *1258 **741 Bill Lockyer, Attorney General, Carlos Ramirez, Assistant Attorney General, Barry D. Ladendorf and Heidi R. Weisbaum, Deputy Attorneys General, for Defendant and Appellant.
Law Offices of Richard K. Turner, Richard K. Turner; John J. Sansone, County Counsel (San Diego) and Thomas D. Bunton, Deputy County Counsel, for Plaintiff and Respondent.
WERDEGAR, J.
We address in this case the proper interpretation of Government Code section 11521, subdivision (a) (hereafter section 11521(a)) [FN1] concerning the length

f time a state administrative agency can stay its decision in order to review a petition for reconsideration once the petition has been filed. In this case, the Medical Board of California issued a 28-day stay to review an already filed petition. The trial court held that section 11521(a) allows a maximum 10-day stay. The Court of Appeal ***534 reversed. We reverse the judgment of the Court of Appeal.

FN1. All further statutory references are to the Government Code unless otherwise stated.

*1259

The Attorney General, representing the Medical Board of California (the Board), filed charges of gross negligence, repeated negligent acts, and incompetence against Dr. Harry Bonnell in connection with two autopsies he performed while serving as chief deputy medical examiner for San Diego County. A hearing was held before an administrative law judge (ALJ) who recommended that the Board's accusations be dismissed. The Board adopted the ALJ's decision on July 12, 2000, ordering that it take effect at 5:00 p.m. on August 11, 2000.

On August 9, 2000, two days before the effective date of the decision, the Attorney General filed a petition for reconsideration. The next day, the Attorney General filed a request pursuant to section 11521(a) for a stay of the Board's decision in order to give the Board additional time to review the petition. On August 11, the Board granted a 28-day stay, extending the effective date of the decision from August 11 to September 8. The order stated the stay was granted "solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration."

Bonnell thereafter filed a timely petition for writ of administrative mandate in the superior court. While that petition was pending, the Board on September 6 granted the Attorney General's petition for reconsideration. The next day, the trial court issued an alternative writ of mandate, commanding the Board to set aside its 28-day stay or to show cause why it should not be set aside.

Following an evidentiary hearing, the trial court held that section 11521(a) allowed the Board to grant only a maximum 10-day stay to review an already filed petition and that the Board's order for reconsideration was therefore void for lack of jurisdiction. The Court of Appeal reversed. We granted Bonnell's petition for review.

Section 11521(a), part of the Administrative Procedure Act (APA) (§ 11340 et seq.), authorizes a state agency to order a reconsideration of its own administrative adjudication. Section 11521(a) states: "The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of **742 not to exceed 30 days which the agency may grant for the purpose of filing *1260 an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied."

Before the enactment of section 11521(a), we recognized that in the absence of statutory authority, administrative agencies generally lacked the power to order reconsiderations. (*Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209, 109 P.2d 918; *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407-408, 57 P.2d 1323.) Section 11521(a) was enacted in 1945 (Stats.1945, ch. 867, § 1, p. 1634) and amended in 1953 to add the final segment of the second sentence, which provides for a stay of "not to exceed ***535 30 days which the agency may grant for the purpose of filing an application for reconsideration" (Stats.1953, ch. 964, § 1, p. 2340). In 1987 the statute was amended to include the third sentence, providing for a maximum 10-day stay "solely for the purpose of considering the petition" (Stats.1987, ch. 305, § 1, pp. 1369-1370). Section 11521(a) applies to the Board. (§ § 11500, subd. (a), 11373.)

The trial court concluded the language in section 11521(a) allowed the Board to grant only a maximum 10-day stay to review an already filed petition. The Court of Appeal disagreed. Relying on *Koehn v.*

State Board of Equalization (1958) 166 Cal.App.2d 109, 333 P.2d 125(*Koehn*), the court held that the second sentence in section 11521(a), providing a maximum 30-day stay "for the purpose of filing an application for reconsideration," also allowed a 30-day stay to review petitions that had already been filed.

Koehn, the only case factually analogous to the one before us, was decided almost 30 years before the 1987 amendment that added to section 11521(a) the provision for a maximum 10-day stay "solely for the purpose of considering the petition." In *Koehn*, the agency decision at issue was to become effective on September 21. (*Koehn, supra*, 166 Cal.App.2d at p. 112, 333 P.2d 125.) A petition for reconsideration was filed on September 10, and a 22-day stay was granted on September 17. (*Ibid.*) Koehn argued the 22-day stay was unlawful because the petition for reconsideration had been filed prior to the issuance of the stay and therefore could not qualify as "a stay for the purpose of filing an application for reconsideration [as provided in section 11521(a)], because such an application was then on file." (*Id.* at p. 113, 333 P.2d 125.) In rejecting the argument, the *Koehn* court relied upon the rule of statutory construction that " 'where the language of a statute is ... reasonably susceptible of either of two constructions, one which, in its application, will render it reasonable, fair, and just, ... and another which, in its application, would be productive of *1261 absurd consequences, the former construction will be adopted.' " (*Id.* at pp. 114-115, 333 P.2d 125.) Limiting the maximum 30-day stay to apply only where a petition for reconsideration had yet to be filed, the court reasoned, "would result in the absurd situation, that if one desiring reconsideration would withhold filing his petition the board could stay for 30 days the effective date of the decision, but if he filed such petition it could not and would have to determine his petition before the effective date of the order arrived." (*Id.* at p. 114, 333 P.2d 125.) Thus, the "absurdity" consisted in the circumstance that the agency would have less time to review and hence would be more likely to deny the petition of a diligent petitioner than that of a dilatory one. The court concluded "the [30-day] stay provided for is not just to allow additional time for the *filing* of the petition but is also to allow additional time to consider it and to *order* reconsideration if deemed advisable. This would necessarily apply to a petition already filed as well as to one that was to be filed. This is the common sense construction of the statute." (*Ibid.*)

The Court of Appeal in the present case determined that the 1987 amendment adding to section 11521(a) the maximum 10-day stay "solely for the purpose of considering the petition" did not remedy the problem identified in *Koehn*, but instead supported the **743 *Koehn* interpretation. It held that section 11521(a) allows an agency to grant a maximum 30-day stay either to allow a party to file a petition for reconsideration or to allow an agency to review an already filed petition, and that the maximum 10-day stay allows an agency an ***536 additional 10 days, if necessary, to review an already filed petition.

[1][2][3] "We begin our discussion with the oft-repeated rule that when interpreting a statute we must discover the intent of the Legislature to give effect to its purpose, being careful to give the statute's words their plain, commonsense meaning." (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919, 129 Cal.Rptr.2d 811, 62 P.3d 54.) In undertaking this task, we adhere to the guideline that "[i]f the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (*Ibid.*) When the statutory language is unambiguous, " 'we presume the Legislature meant what it said and the plain meaning of the statute governs.' " (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047, 80 Cal.Rptr.2d 828, 968 P.2d 539.) Statutory language is not considered in isolation. Rather, we "instead interpret the statute as a whole, so as to make sense of the entire statutory scheme." (*Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132, 1135, 90 Cal.Rptr.2d 804, 988 P.2d 1083.)

A. The Language of Section 11521(a) Is Unambiguous

As previously discussed, section 11521(a) specifies the amount of time an administrative agency has to order a reconsideration of its own *1262 decision and states that if no action is taken by the agency within the time allowed, the petition is deemed denied. (§ 11521(a); *Gamm v. Board of Medical Quality Assurance* (1982) 129 Cal.App.3d 34, 35-36, 181 Cal.Rptr. 23.) The second sentence of the statute provides the general rule that "[t]he [agency's] power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent ...." (§ 11521(a).) The statute then states two exceptions. An agency may, pursuant to the second segment of the second sentence, shorten the standard 30-day period in which to order a

reconsideration by making its decision effective on a date "prior to the expiration of the 30-day period." (*Ibid.*) Alternatively, pursuant to the third segment of the second sentence, an agency can lengthen its period to act by making its decision effective "at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration" [FN2] (§ 11521(a)), provided this maximum 30-day stay is granted within the initial 30-day (or less) period (§ 11519, subd. (a); see *Koehn, supra,* 166 Cal.App.2d at p. 113, 333 P.2d 125). The third sentence of section 11521(a) provides that "[i]f additional time is needed to evaluate a petition for reconsideration" after "the expiration of any of the [three] applicable periods," a maximum 10-day stay may be granted.

FN2. "The power to order reconsideration expires (a) 30 days after delivery or mailing of the decision to the respondent, (b) on an earlier date on which the decision becomes effective, or (c) on the termination of a stay of no more than 30 days granted for the purpose of filing an application for reconsideration." (9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 101, p. 1146.)

[4] Turning to the question in this case, we find it evident that once a petition for reconsideration has been filed, an agency may no longer grant the maximum 30-day stay authorized by the second sentence of section 11521(a); the plain language of the statute dictates that the maximum 30-day stay is "for the purpose of *filing* an application for reconsideration."(§ 11521(a), italics added.) We agree with Bonnell that once a petition has been filed, ***537 any stay that is granted can only be "solely for the purpose of considering the petition"(*ibid.*) and must be limited to 10 days.

Our construction limiting the Board to a 10-day stay for already filed petitions does not, of course, mean that an administrative agency will always have only 10 days to review a filed petition for reconsideration. Like the original 30-day (or less) period, the maximum 30-day stay period is not *solely* for **744 the purpose of filing a petition. If, for example, the petitioner were to file on the fifth day of the 30-day stay, the agency would have 25 days remaining to evaluate the petition. If, at the end of this period, the agency believed it needed additional time to review the petition, it could grant a maximum 10-day stay. The word "solely," therefore, which is found in the third sentence restricting the purpose of the 10-day stay, is presumably omitted *1263 from the last segment of the second sentence, authorizing a 30-day stay, to enable an agency to begin evaluating a petition as soon as it is filed. This comports with the language in the third sentence, which indicates that the maximum 10-day stay is not mandatory, but available "[i]f additional time is needed to evaluate a petition."(§ 11521(a).) The third sentence presumes the agency may already have had sufficient time to evaluate the petition.

The Attorney General argues that limiting agencies to a 10-day stay for consideration of already filed petitions will result in the same absurdity recognized in *Koehn, supra,* 166 Cal.App.2d 109, 333 P.2d 125, in that "[t]he more diligent party is penalized while the more dilatory one is rewarded." (See *ante,* 8 Cal.Rptr.3d at pp. 535-536, 82 P.3d at pp. 742-743.)

[5][6] While "[w]e avoid any construction that would produce absurd consequences"(*Flannery v. Prentice* (2001) 26 Cal.4th 572, 578, 110 Cal.Rptr.2d 809, 28 P.3d 860), construing the plain language of section 11521(a) to allow a maximum 10-day stay for review of already filed petitions results in no absurdity. In amending section 11521(a) to add the 10-day stay provision, the Legislature resolved the apparent absurdity identified by the *Koehn* court. Implicit in the statutory amendment is a legislative determination that an agency needs, at most, 10 days to review a petition. This is because, at the extreme, if a party were to file the day before the effective date or on the last day of a 30-day stay and the agency then granted a 10-day stay, the agency would have at most 10 days to decide whether to grant the petition.[FN3] If 10 days is in fact insufficient time for agency review, or if dilatory parties are accorded some advantage, this "absurdity" is best addressed by the Legislature. It is not our function to "inquir[e] into the 'wisdom' of underlying policy choices," (*People v. Burn* (2002) 27 Cal.4th 1, 17, 115 Cal.Rptr.2d 192, 37 P.3d 380.) "[O]ur task here is confined to statutory construction." (*Davis v. KGO-T.V., Inc.* (1998) 17 Cal.4th 436, 446, 71 Cal.Rptr.2d 452, 950 P.2d 567.)

FN3. Of course, the 10-day stay provision has no bearing on the time allowed to decide the merits of the claims made in a petition for rehearing. (See § § 11521, subd. (b), 11517.)

B. Legislative Intent

The Attorney General maintains that even if the 1987 amendment to section 11521(a) undermines the reasoning of *Koehn, supra,* 166 Cal.App.2d 109, 333 P.2d 125, we should nonetheless adhere to its holding, because the Legislature presumably was aware of the *Koehn* interpretation and, by not altering the second sentence of the statute, acquiesced in it. Applying this rule of construction is unwarranted***538 because we have determined the language of section 11521(a) is clear and unambiguous. (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 323, 87 Cal.Rptr.2d 423, 981 P.2d 52.)

[7] *1264 For the same reason we decline to review the legislative history relating to the 1953 amendment adding the 30-day stay provision to section 11521(a) and the 1987 amendment adding the maximum 10-day stay. We have consistently stated that when statutory language is clear and unambiguous, resort to the legislative history is unwarranted. (*People v. Johnson* (2002) 28 Cal.4th 240, 247, 121 Cal.Rptr.2d 197, 47 P.3d 1064; see also *Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 213, 105 Cal.Rptr.2d 407, 19 P.3d 1148.) We adhere to that position here.

C. Deference to the Board's Interpretation of Section 11521(a)

[8] The Attorney General argues that the Board has consistently interpreted section 11521(a) to allow a maximum 30-day stay for evaluating already filed petitions and contends that the Board's interpretation is entitled to deference. He cites to a declaration **745 by David T. Thornton, chief of enforcement for the Board,[FN4] and directs our attention to a page from the Board's Discipline Coordination Unit Procedure Manual entitled "Request for MBC Stay."[FN5] Even were we to assume these two items from the record are conclusive proof that the Board has consistently interpreted section 11521(a) as the Attorney General argues, the purported Board interpretation is not entitled to judicial deference.

FN4. Thornton's declaration states: "It is [the Board's] position that section 11521(a) allows for a 30-day stay ... for the purpose of both filing and reviewing a petition for reconsideration.... The ten days is *added to* the initial stay period."

FN5. "MBC" stands for Medical Board of California. The page describes a stay request and explains that stays "are generally requested ... in order to allow time to prepare and file a Petition for Reconsideration. The agency can also grant its own stay to allow time to consider a Petition for Reconsideration.... [¶] ... [¶] An additional 10 day stay may be granted solely to allow the voting body sufficient time to vote on the matter." The Attorney General posits that because the text describing the 10-day stay appears in a lower, separate paragraph on the page in the manual, the Board necessarily believed the 30-day stay applied to already filed petitions.

We addressed the issue of judicial deference to administrative agency statutory interpretation in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 78 Cal.Rptr.2d 1, 960 P.2d 1031 (*Yamaha*). In *Yamaha,* the Court of Appeal had determined a State Board of Equalization publication represented the dispositive interpretation of Revenue and Taxation Code section 6008 et seq. (*Yamaha, supra,* at pp. 5-6, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) In reversing and remanding, we acknowledged that while "agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts" (*id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031), "agency interpretations are not binding or ... authoritative" (*id.* at p. 8, 78 Cal.Rptr.2d 1, 960 P.2d 1031). "Courts must, in short, independently judge the text of [a] statute...." (*Id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) We determined that the weight accorded to an agency's interpretation is "fundamentally situational" (*id.* at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031, italics *1265 omitted) and "turns on a legally informed, commonsense assessment of [its] contextual merit" (*id.* at p. 14, 78 Cal.Rptr.2d 1, 960 P.2d 1031). *Yamaha* set down a basic framework of factors as guidance and concluded that the degree of deference accorded should be dependent in ***539 large part upon whether the agency has a " 'comparative interpretative advantage over the courts' " and on whether it has arrived at the correct interpretation. (*Id.* at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

[9] Applying these basic principles of judicial review, our deference is unwarranted here. The Board's interpretation is incorrect in light of the unambiguous language of the statute. We do not accord deference to an interpretation that is " 'clearly erroneous.' " (*People ex rel. Lungren v. Superior Court* (1996) 14

Cal.4th 294, 309, 58 Cal.Rptr.2d 855, 926 P.2d 1042; *Yamaha, supra,* 19 Cal.4th at p. 14, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Furthermore, section 11521(a) is not a regulation promulgated by the Board, but a legislative enactment applicable to a wide range of administrative agencies. We are less inclined to defer to an agency's interpretation of a statute than to its interpretation of a self-promulgated regulation. (*Yamaha, supra,* at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Nor does the Board have any particular expertise in interpreting widely applicable administrative adjudication statutes. (*Ibid.*; see *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal.App.4th 498, 505-506, 130 Cal.Rptr.2d 823 [declining to accord deference to regulations promulgated by the Dept. of Health Services pursuant to the APA].) While the Board is generally required to adhere to the provisions of the APA (Bus. & Prof.Code, § 2230), this responsibility is incidental to its primary duty to carry out disciplinary actions against members of the medical profession (*id.*, § 2004).

In sum, we agree with Bonnell that section 11521(a) is unambiguous and allows a maximum 10-day stay for agency review of an already filed petition for reconsideration. As a result, the Board's decision to order a reconsideration is void for lack of jurisdiction. **746(*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1042, 56 Cal.Rptr.2d 109, 920 P.2d 1314 ["An administrative agency must act within the powers conferred upon it by law and may not act in excess of those powers.... Actions exceeding those powers are void"]; *Ginns v. Savage* (1964) 61 Cal.2d 520, 525, 39 Cal.Rptr. 377, 393 P.2d 689 [agency's power to order reconsideration expires on the date set as the effective date of the decision].)

The judgment of the Court of Appeal is reversed.

WE CONCUR: GEORGE, C.J., KENNARD, BAXTER, CHIN, BROWN, and MORENO, JJ.
Cal.,2003.
Bonnell v. Medical Bd. of California
31 Cal.4th 1255, 82 P.3d 740, 8 Cal.Rptr.3d 532, 03 Cal. Daily Op. Serv. 11,170, 2003 Daily Journal D.A.R. 14,091

END OF DOCUMENT

CITY OF ONTARIO, Petitioner,
v.
THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE ex rel. DEPARTMENT OF TRANSPORTATION, Real Party in Interest.
No. E011476.

Court of Appeal, Fourth District, Division 2, California.
Jan. 25, 1993.

SUMMARY

The trial court overruled a city's demurrer to a complaint against it by the state for equitable indemnity, the city having argued that the state's demand was barred because it had not filed a claim pursuant to the requirements of the Government Tort Claims Act (Gov. Code, § 810 et seq.). The city then sought writ relief. (Superior Court of San Bernardino County, No. RCV 56547, Joseph E. Johnston, Judge.)

The Court of Appeal issued a writ of mandate directing the trial court to vacate its order overruling the city's demurrer and enter a new order sustaining it without leave to amend. The court held that the action by the state was barred by the state's failure to precede its lawsuit with the filing of a claim pursuant to the Government Tort Claims Act, in view of a city ordinance enacted pursuant to the authority granted by Gov. Code, § 935. Under that statute, a local public entity may establish its own policies and procedures for the presentation of claims against them that are excepted from the general claims filing requirement pursuant to Gov. Code, § 905. The city ordinance required the state to present a claim as a prerequisite to filing suit. Gov. Code, §§ 905 and 935, read together, are perfectly clear: one creates exemptions from the state-mandated claims procedure (Gov. Code, § 905); the other permits local public entities to enact their own procedures to cover the exempted claims (Gov. Code, § 935), and, by its terms, covers all "[c]laims against a local public entity for money or damages which are excepted by Section 905 ...." It does not incorporate any suggestion whatsoever that it does not apply to claims by the state. (Opinion by McKinster, J., with Hollenhorst, Acting P. J., and McDaniel, J. [FN*] concurring.)

FN* Retired Associate Justice of the Court of Appeal, Fourth District, senior judge status (Gov. Code, § 75028.1), sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Mandamus and Prohibition § 35--Mandamus--To Courts--Pleading--Important Legal Issue.
Although plenary review is not routinely afforded for orders with respect to pleadings, mandamus was proper to review an order overruling a city's demurrer to an indemnity claim against it by the state, where the issue involved-the application of the claims requirement to the state under the Government Tort Claims Act (Gov. Code, § 810 et seq.)-was one of substantial legal importance. If the city's position was correct, the entire case would be disposed of without the expense and delay of trial. In the circumstances, the availability of an eventual remedy by appeal from an unfavorable judgment was not adequate.

(2a, 2b) Government Tort Liability § 16--Claims--Purpose.
The general rule under the Government Tort Claims Act (Gov. Code, § 810 et seq.) is that any party with a claim for money or damages against a public entity must first file a claim directly with that entity; only if that claim is denied or rejected may the claimant file a lawsuit (Gov. Code, § 905). The purpose of requiring the filing of claims, and of prescribing limited time frames in which such claims may be filed, is to give the public entity the opportunity to investigate the facts while the evidence is fresh, as well as to settle meritorious cases without the need of litigation. Furthermore, the prompt presentation of a claim for money permits the recipient public entity to make appropriate fiscal planning decisions.

(3a, 3b, 3c, 3d) Government Tort Liability § 17--Claims-- Presentation--Application to State Action Against City.

An action by the state against a city for equitable indemnity was barred by the state's failure to first file a claim pursuant to the Government Tort Claims Act (Gov. Code, § 810 et seq.), where a city ordinance enacted pursuant to the authority granted by Gov. Code, § 935, made claims otherwise exempt from the claims-filing requirement (Gov. Code, § 905), subject to the city's claims procedures. The ordinance required the state to present a claim as a prerequisite to filing suit. Gov. Code, §§ 905 and 935, read together, are perfectly clear: one creates exemptions from the state-mandated claims procedure (Gov. Code, § 905); the other permits local public entities to enact their own procedures to cover the exempted claims (Gov. Code, § 935), and, by its terms, covers all "[c]laims against a local public entity for money or damages which are excepted by Section 905 ...." It does not incorporate any suggestion whatsoever that it does not apply to claims by the state.
[See 3 **Witkin,** Cal. Procedure (3d ed. 1985) § 477.]
(4) Municipalities § 55--Ordinances--Validity--Conflict With Statutes--Tort Claims Act.
Municipal liability for torts is a matter of state concern, and thus may not be regulated by local ordinances inconsistent with state law as established by the Government Tort Claims Act (Gov. Code, § 810 et seq.).

(5a, 5b) Statutes § 30--Construction--Literal Interpretation--Plain Meaning Rule.
It is one of the best-established and most sensible rules of the law that courts should not imaginatively construe-or meddlesomely fiddle with-statutes which are clearly written. If language is clear and unambiguous there is no need for construction. In construing the terms of a statute, courts resort to the legislative history of the measure only if its terms are ambiguous. However, in applying the "plain meaning" rule, literal construction should not prevail if it is contrary to the legislative intent apparent in the statute.

COUNSEL

Lynberg & Watkins, and Stephen M. Harber for Petitioner.

No appearance for Respondent.

William M. McMillan, Anthony J. Ruffolo, Robert W. Vidor, Larry R. Danielson and Joseph Vanderhorst for Real Party in Interest.

McKINSTER, J.

In this case, which appears to be one of first impression, we are called upon to determine whether the State of California's (State) demand for equitable indemnity against the City of Ontario (City) is barred by the State's failure to precede its lawsuit by the filing of a claim pursuant to the Government Tort Claims Act. (Gov. Code, § 810 et seq.) [FN1] The State argues that section 905, subdivision (i), specifically exempts claims by the State ***897** from the general requirements. The City responds that section 935 permits it to override this exemption by enactment, and that it has in fact done so. We agree with the City, and find that the trial court erred in overruling its demurrer to the State's complaint.

> FN1 All subsequent statutory references are to the Government Code unless otherwise noted.

The factual and procedural background of the matter may be quickly recited. On January 16, 1991, the State filed a complaint for indemnity against the City, alleging that third party plaintiffs had recovered a judgment against the State based on flood damage, and that it had paid the judgment on February 20, 1990. The State further alleged that the damages suffered by the plaintiffs in that action were due in whole or in part to acts or omissions of defendant City.

The City successfully demurred to this original complaint, which included causes of action sounding in nuisance and inverse condemnation, and alleged a dangerous condition of public property. (See § 835.) The State then filed a first amended complaint which set forth one simple cause of action for equitable indemnity.

The City again demurred, arguing that the State's demand was barred because it had not filed a claim. In addition, the City argued that the complaint was barred by the statute of limitations in that the State's claim had accrued no later than May 11, 1984. [FN2]The State responded by asserting that it was not subject to the claims filing procedures, and the trial court evidently agreed. The City promptly sought extraordinary relief, asking this court to direct the trial court to sustain its demurrer without leave to amend. We is-

sued an alternative writ of mandate and set the matter for hearing.

> FN2 The origin of this date is not clear. According to the demurrer, the third parties filed their action against the State on December 21, 1983, and the State responded "shortly thereafter." The City relied on section 901, which provides that a cause of action for equitable indemnity against a public entity accrues when the complaint giving rise to the claim for indemnity is served upon the party later seeking such indemnity. The State relied on the rule that, outside the purview of the claims statutes, a cause of action for indemnity accrues when the indemnitee actually pays a judgment or settlement to a third party. (See *Valley Circle Estates v. VTN Consolidated, Inc.* (1983) 33 Cal.3d 604, 611 [189 Cal.Rptr. 871, 659 P.2d 1160].)
>
> As we hold that the State's action is in fact subject to the claims requirements established by the City, this point is moot. It appears self-evident, however, that if the claims procedures do not apply, the special Tort Claims Act provision with respect to accrual would not apply. We observe that section 901 expressly covers "the purpose of computing the time limits prescribed by Sections 911.2, 911.4, 912, and 945.6 ...." It does not purport to change general law.

Discussion

(1) First, we find that extraordinary review is appropriate. We do not routinely afford plenary review to orders with respect to pleadings. (See ***898** *Babb v. Superior Court* (1971) 3 Cal.3d 841, 850-851 [92 Cal.Rptr. 179, 479 P.2d 379].) In this case, however, the issue is one of substantial legal importance. (*Ibid.*) If the City's position is correct, the entire case will be disposed of without the expense and delay of trial. In the circumstances, the availability of an eventual remedy by appeal from an unfavorable judgment is not adequate. (See *Tyco Industries, Inc. v. Superior Court* (1985) 164 Cal.App.3d 148, 153-154 [211 Cal.Rptr. 540].)

(2a) The general rule under the Tort Claims Act is that any party with a claim for money or damages against a public entity must first file a claim directly with that entity; only if that claim is denied or rejected may the claimant file a lawsuit. (§§ 905, 945.4; *Fisher v. Pickens* (1990) 225 Cal.App.3d 708, 718 [275 Cal.Rptr. 487].) [FN3]Section 905, enacted in 1963 and not amended since that time, [FN4] both states the rule and creates a number of exceptions to it. It lists 12 categories of claims which are exempt from the filing requirement, including tax claims, claims by public employees for wages, pension claims, claims for principal or interest upon bonds, and claims under the Pedestrian Mall Act of 1960. Pertinent here is subdivision (i), which similarly exempts "Claims by the State or by a state department or agency or by another public entity."

> FN3 The most commonly litigated exception concerns the claimant who fails to file a claim within the statutory period, is refused leave by the public entity to file a late claim, and seeks judicial relief from the requirements upon a showing of valid excuse or incapacity. (§§ 911.4, 911.6; § 946.6.)
>
> FN4 Both sections 905 and 935 were previously contained in the Government Code as sections 703 and 730, respectively. They obtained their current numbers at the time the California Tort Claims Act was adopted in 1963.

Thus, under section 905, the State's claim against the City could be pressed directly through litigation, without the precedent filing of a claim. The same is true of the other categories of claims described in that statute.

However, section 935 specifically empowers local public entities to establish their own policies and procedures for the presentation of those claims against them which are excepted by section 905. "Claims against a local public entity for money or damages which are excepted by Section 905 from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance, or regulation adopted by the local public entity." The statute then expressly permits the local public entity

to establish a claim requirement, so long as the procedures are similar to, and not more restrictive than, those established by the Tort Claims Act with respect to claims not exempted by section 905. *899

In connection with its demurrer to the amended complaint, the City presented a copy of Ordinance No. 3-2.02, which expressly refers to the authority granted by section 935. [FN5]The ordinance provides in part that "[p]ursuant to the authority contained in Section 935 of the Government Code of the State, the following claims procedures are established for those claims against the City for money or damages not now governed by State or local laws." Subdivision (a) deals with employee claims; subdivision (b), governing "contract and other claims," reads in part "... notwithstanding the exemptions set forth in Section 905 of the Government Code of the State, all claims against the City for damages or money, when a procedure for processing such claims is not otherwise provided by State or local laws, shall be presented within the time limitations and in the manner prescribed by Sections 910 through 915.2 of the Government Code of the State. *Such claims shall further be subject to the provisions of Section 945.4 of the Government Code of the State relating to the prohibition of suits in the absence of the presentation of claims and action thereon by the Council.*" (Italics supplied.)

> FN5 The City requested that the court take judicial notice of the ordinance. While the record does not reflect a ruling on the point, it is apparent that such notice was in fact taken. Although usually confined to the face of the pleadings, a demurrer may be supported by any matter of which the court may take judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) County ordinances may be judicially noticed under Evidence Code section 452, subdivision (b) ("[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States"). (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 24 [157 Cal.Rptr. 706, 598 P.2d 866]; *Long Beach Equities, Inc. v. County of Ventura* (1991) 231 Cal.App.3d 1016, 1024 [282 Cal.Rptr. 877].) We also take judicial notice of the ordinance as contained in the record.

(3a) The clear intent and effect of this ordinance is to take advantage of the power granted by section 935, and to make claims otherwise exempted by section 905 subject to the City's claims procedures (which happen to be based on those applicable to all claims not exempted by section 905). As the State's claim against the City is exempted by section 905, it seems plain, at first blush, that the ordinance requires the State to present a claim as a prerequisite to filing suit.

The State does not seriously contest this facial reading of the ordinance, but takes the position that section 935 simply does not authorize a local public entity to compel the State to submit to any claims procedure.

(4) We begin by agreeing with the State that municipal liability for torts is a matter of state concern, and thus may not be regulated by local ordinances inconsistent with state law as established by the Tort Claims Act. (*900*Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 463 [183 Cal.Rptr. 51, 645 P.2d 102].) (3b) However, this begs the question; the City is not attempting to enact inconsistent legislation, but is merely exercising the authority affirmatively granted to it by the State in section 935.

We also have no quarrel with the proposition that the City could not impose regulations upon the State which contradicted or exceeded those to which the State consented to subject itself. Thus, in *Hall v. City of Taft* (1956) 47 Cal.2d 177 [302 P.2d 574], the court prohibited a city from enforcing its building code against a contractor retained by the State to construct a building on State property, for State use. The court ruled that "[w]hen it engages in such sovereign activities as the construction and maintenance of its buildings, as differentiated from enacting laws for the conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." (*Id.*, at p. 183.)If section 905 stood alone with its provision that the State was not required to file a claim as a prerequisite to filing suit against a local public entity, certainly the City could not bind the State to compliance with whatever conditions and requirements it chose to impose upon claimants.

But, of course, section 905 does not stand alone; it is modified by section 935. In our view section 935*does*

constitute express consent to the imposition of the specified requirements.

As the City points out, the latter section's effect has been recognized in the context of other categories of claims which otherwise would be exempted by section 905. In *Calvao v. Superior Court* (1988) 201 Cal.App.3d 921, 922-923 [247 Cal.Rptr. 470], the court held that an employee's claim for wages, exempted by section 905, was subject to defendant county's claims requirement as enacted pursuant to section 935; similar is *Pasadena Hotel Development Venture v. City of Pasadena* (1981) 119 Cal.App.3d 412, 414-415 [174 Cal.Rptr. 52], involving a claim for a tax refund.

However, the State insists nevertheless that section 935 does not apply to claims by the State exempted by section 905, subdivision (i). Insofar as the State relies on the position that the basic purpose of section 935 was to allow local public entities to prescribe claims procedures for miscellaneous claims, but to do so within a consistent framework, we do not disagree. But when the State leaps from this point to the conclusion that section 935 applies only selectively to the exemptions in section 905, we decline to follow.

The State argues that the legislation was accompanied by a Law Revision Commission report or recommendation, which discussed the necessity of ***901** exempting certain "types" of claims from the operation of the Tort Claims Act. It interprets this comment as recognizing the difference in "type" between the contract and tort claims routinely covered by the act, and the less easily described claims which were eventually exempted by section 905. Further, it reasons that section 935 was then intended to permit local public entities to reinstate claims requirements *only* for these miscellaneous "types" of claims.

The State's position, as we understand it, is this. Section 905 is *primarily* concerned with "types" of claims, in the sense that it governs procedures for claims based on miscellaneous legal theories not directly covered by the Tort Claims Act. On the other hand, subdivision (i), exempting "claims by the State" (as well as by other local public entities), includes *all* claims by a particular claimant, whether otherwise covered by the Tort Claims Act or not. Thus, in the State's view, subdivision (i) is *sui generis* within the statute, and "claims by the State" are not to be lumped in with the other "types" of claims when the effect of section 935 is considered.

(5a) It is one of the best-established and most sensible rules of the law that courts should not imaginatively construe-or meddlesomely fiddle with-statutes which are clearly written. If "language is ... clear and unambiguous, there is no need for construction." (*In re Lance W.* (1985) 37 Cal.3d 873, 886 [210 Cal.Rptr. 631, 694 P.2d 744].) Still more recently the Supreme Court has warned that "[i]n construing the terms of a statute we resort to the legislative history of the measure only if its terms are ambiguous." [FN6](*Title Ins. & Trust Co. v. County of Riverside* (1989) 48 Cal.3d 84, 96 [255 Cal.Rptr. 670, 767 P.2d 1148].)

> FN6 In fact, as noted below, we do not find the legislative history either particularly illuminating or contrary to the construction we adopt.

In *Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504 [11 Cal.Rptr.2d 161], this court rejected the argument of the State Compensation Insurance Fund that Insurance Code section 11873, which exempted the fund from the provisions of the Government Code except as specifically noted, did not make inapplicable to the fund section 818's general exemption from punitive damages. We held that the plain language of the statutes compelled a result unfavorable to the fund despite the assertion that the Fund, which sponsored the underlying legislation, could not possibly have intended such a consequence. Similarly, although the State now argues that it meant to exempt itself absolutely from any claim requirement, we find this case also an appropriate one for the application of the "plain meaning" rule.

(3c) Sections 905 and 935, read together, are perfectly clear.Section 905 creates exemptions from the state-mandated claims procedure; section 935***902** permits local public entities to enact their own procedures to cover the exempted claims. Section 935, by its terms, covers *all* "[c]laims against a local public entity for money or damages which are excepted by Section 905 ...." It does not incorporate any suggestion whatsoever that it does not apply to claims by the State.

Subdivision (i) exempts not only claims by the State but also those by local public entities and it has been assumed by the commentators that a local public entity may bind other public entities to the claims provisions it establishes pursuant to section 935. (See Cal. Government Tort Liability Practice (Cont.Ed.Bar 1992) § 6.24, pp. 662-665.) Prior to the enactment of the Tort Claims Act and the exemption of section 935, it was also assumed that the State was required to follow the general claims requirements when seeking to press a demand against a local public entity. (See *State Dept. of Pub. Health v. Imperial* (1944) 67 Cal.App.2d 244 [153 P.2d 957].) The only reasonable construction of sections 905 and 935 is that this result is permissible when a local public entity exercises the power granted by the latter statute.

We must assume that the Legislature knew how to create an exception if it wished to do so; nothing would have been simpler than to insert into the first paragraph of section 935 the proviso that "nothing in this section shall apply to those claims by the State or by a state department or agency." It did not do so, and the State is now asking us to engage in the most extreme form of judicial rewriting of the statutes.

(5b) We are aware that, in applying the "plain meaning" rule, "[l]iteral construction should not prevail if it is contrary to the legislative intent apparent in the statute." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].) However, we are unable to discern any particular intent that claims by the State should be absolutely and unalterably unaffected by any claims procedures established by a local public entity. This is not a case in which an overly technical parsing of one poorly worded phrase reaches a result which is contrary to the obvious overall meaning of the statute; there is simply nothing in the language of either section 905 or 935 from which we can reach the conclusion desired by the State.

Nor is the result in any way antithetical to the general thrust and purpose of the Tort Claims Act. (2b) The purpose of requiring the filing of claims, and of prescribing limited time frames in which such claims may be filed, is to give the public entity the opportunity to investigate the facts while the evidence is fresh, as well as to settle meritorious cases without the need of litigation. (*Powell v. City of Long Beach* (1985) 172 Cal.App.3d 105, 111***903** [218 Cal.Rptr. 97]; *Tyus v. City of Los Angeles* (1977) 74 Cal.App.3d 667, 672 [141 Cal.Rptr. 630].) Furthermore, the prompt presentation of a claim for money permits the recipient public entity to make appropriate fiscal planning decisions. (*San Diego Unified Port Dist. v. Superior Court* (1988) 197 Cal.App.3d 843, 847 [243 Cal.Rptr. 163].) (3d) We are unable to see how these beneficial goals would be served by permitting the State to spring demands upon local public entities without following the claims procedures, or how they would be hampered if the State is compelled to join with all other claimants in submitting timely notification of its demands under the local ordinance.

We hold that the State is subject to the claims requirements established by the City, and that its failure to comply with those requirements bars it from proceeding in court on its claim for indemnification.

The alternative writ, having served its purpose, is discharged. Let a peremptory writ of mandate issue directing the superior court to vacate its order overruling the City's demurrer, and to enter a new order sustaining the demurrer without leave to amend.

Hollenhorst, Acting P. J., and McDaniel, J., [FN*] concurred.

FN* Retired Associate Justice of the Court of Appeal, Fourth District, senior judge status (Gov. Code, § 75028.1), sitting under assignment by the Chairperson of the Judicial Council.

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COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, Plaintiff and Appellant,
v.
COUNTY OF LOS ANGELES et al., Defendants and Respondents.
No. B136115.

Court of Appeal, Second District, Division 2, California.

May 31, 2001.

SUMMARY

A community redevelopment agency brought a writ of mandate action against a county seeking declaratory and injunctive relief, and damages. The dispute concerned the manner of sharing property tax revenues. Plaintiff alleged that the county's procedure of offsetting or withholding the administrative costs from the revenue it allocated and paid to plaintiff was not authorized by Rev. & Tax. Code, § 95.3, and that the sums withheld should not be included as tax increment received by plaintiff for purposes of certain tax increment limitations. The trial court denied the writ petition and dismissed the complaint. (Superior Court of Los Angeles County, No. BC197625, Robert H. O'Brien, Judge.)

The Court of Appeal affirmed. It held that the procedure followed by the county was what was prescribed in Rev. & Tax. Code, § 95.3. Any other interpretation could allow a redevelopment agency to avoid or shift the financial burden of collecting property tax revenues to other agencies or the county. The court further held that Cal. Const., art. XVI, § 16 (tax revenue increment from redevelopment plan area shall be allocated to and paid into special fund of plan area), does not prevent the Legislature from altering the levying and collection of tax on redevelopment project property consistent with alterations in the levying and collection of tax on other property. (Opinion by Boren, P. J., with Cooper and Doi Todd, JJ., concurring)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Public Housing and Redevelopment § 5--Redevelopment--Allocation of Property Tax Revenues Between County and Redevelopment Agency.

In a property tax dispute between a community redevelopment agency and a county, the trial court did not err in *720 denying plaintiff agency's mandate petition and dismissing its complaint for declaratory and injunctive relief and damages. A redevelopment agency is entitled to the increase in tax revenues, or tax increments, attributable to the area covered by the agency's plans. Defendant county, in calculating its payment of revenues to plaintiff, deducted or withheld under Rev. & Tax. Code, § 95.3, those administrative costs attributable to each redevelopment plan from the tax increment allocated to each plan. This procedure is what is prescribed in the statute. Any other interpretation could allow a redevelopment agency to avoid or shift the financial burden of property tax collection to other agencies or the county. Cal. Const., art. XVI, § 16 (tax revenue increment from redevelopment plan area shall be allocated to and paid into special fund of plan area), does not prevent the Legislature from altering the levying and collection of tax on redevelopment project property consistent with alterations in the levying and collection of tax on other property.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 124.]

(2) State of California § 10--Attorney General--Opinions.

An opinion of the Attorney General is not a mere advisory opinion, but a statement that, although not binding on the judiciary, must be regarded as having a quasi-judicial character. It is entitled to great respect and given great weight by the courts.

COUNSEL

James K. Hahn, City Attorney, Dov Lesel, Assistant City Attorney, Ronald Low, Deputy City Attorney; Goldfarb & Lipman, Lee C. Rosenthal and David M. Robinson for Plaintiff and Appellant.

Lloyd W. Pellman, County Counsel, and Thomas M. Tyrrell, Principal Deputy County Counsel, for Defendants and Respondents.

BOREN, P. J.

Introduction

Community Redevelopment Agency of the City of Los Angeles (CRA) and the County of Los Angeles (County) dispute the manner in which *721 property tax revenue is shared. The dispute centers on County's interpretation of Revenue and Taxation Code section 95.3 (section 95.3), which reduces the amount of revenue that CRA receives. We uphold County's interpretation and affirm.

Background

California law authorizes the creation of community redevelopment agencies to rehabilitate blighted areas. These agencies adopt plans for specific blighted areas, and pursuant to these plans the agencies become entitled to the increase in tax revenues attributable to the redevelopment area covered by the agencies' plans. Generally, as property values in a redevelopment area increase, tax revenues also increase. These incremental increases are referred to as "tax revenue increments" or simply "tax increments." Community redevelopment agencies typically use bonds to fund redevelopment projects and then use allocations of the tax increments to repay the bonds.

The Legislature, in accordance with the California Constitution (art. XVI, § 16), has provided that local taxing agencies remain entitled to the tax revenues they would have received had development not been undertaken. By the same token, redevelopment agencies are entitled as a general principle to the increase in tax revenue generated by a redevelopment project. (Health & Saf. Code, § § 33670, 33671; *Redevelopment Agency v. County of San Bernardino* (1978) 21 Cal.3d 255, 258, 266 [145 Cal.Rptr. 886, 578 P.2d 1331].)

Nonetheless, the Legislature has previously required that redevelopment plans contain limitations on the total amount of tax increment that a plan can receive. Plans promulgated with such tax increment limitations thus cap the total amount of tax increment a plan will receive.

The present appeal concerns interpretation of section 95.3 and its application with respect to tax increment limitations. Section 95.3 allows a county's auditor to attribute administrative and overhead costs to various jurisdictions and agencies-including community redevelopment agencies-for which a county collects and to which a county pays tax revenues. CRA is one of the agencies for which County collects tax revenue. County, in calculating its payment of tax revenues to CRA, deducts or withholds the section 95.3 administrative costs attributable to each redevelopment plan from the tax increment allocated to each plan.

With respect to three redevelopment plans, CRA disputes County's interpretation and application of section 95.3. CRA does not assert that County *722 improperly calculates the amount of the deduction. Rather, CRA asserts that County's procedure of offsetting or withholding the administrative costs from the revenue it allocates and pays to CRA is not authorized by section 95.3. County responds that if the administrative costs are not deducted from the allocation, redevelopment agencies would, in the final analysis, avoid payment of these costs, shift the burden to other jurisdictions and special districts, and make illusory the assessment of the administrative fee.

CRA filed a complaint contending that County's methodology is improper and results in underpayment of revenue to CRA. The trial court did not agree with CRA, denied CRA's petition for writ of mandate, and dismissed the complaint for declaratory relief, injunctive relief and damages.

Factual and Procedural History

The Community Redevelopment Law (CRL) and other statutes authorize the formation of redevelopment agencies such as CRA and empower them to adopt redevelopment plans. (Health & Saf. Code, § 33000 et seq.) CRA has adopted three plans denominated respectively the Pico Union #2 Plan (Pico Union Plan), the Crenshaw Plan, and the Central Business District Plan (CBD Plan). CRA adopted the Pico Union Plan on November 24, 1976, the Crenshaw Plan on May 9, 1984, and the CBD Plan on July 18, 1975.

The CRL and portions of the Revenue and Taxation Code provide that a redevelopment plan receives property tax revenue generated by the increases in property values attributable to the area governed by the plans and also by tax rate increases. A county's auditor then calculates and pays a redevelopment agency in accordance with certain formulas proportionally related to the increase in tax revenues.

The CRL limits the duration of redevelopment plans and requires certain plans to limit the tax dollars they may receive pursuant to the plans. (Health & Saf. Code, § § 33333.2, 33333.4.) Section 33333.2 requires that redevelopment plans have time

mitations. Section 33333.4 pertains to plans adopted before October 1, 1976, without these time limitations and, in subdivision (a)(1), requires that such a redevelopment plan be subject to: "A limitation on the number of dollars of taxes which may be divided and allocated to the redevelopment agency pursuant to the plan, including any amendments to the plan. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond that limitation." Subdivision (g) of section 33333.4 pertains to redevelopment plans adopted after October 1, 1976, and prior to January 1, 1994, and in subdivision (g)(1) contains the exact requirement presented in subdivision (a)(1). Thus, all three redevelopment plans at issue herein are subject to the allocation limitation provisions of section 33333.4. *723

In the early 1990's, at a time when public funds were in crisis, the Legislature enacted several provisions to foster the economic viability of county governments. The Legislature enabled counties to recoup the administrative and overhead costs of collecting and apportioning tax revenues. (See Sen. Bill No. 2557 (1989-1990 Reg. Sess.), enacted as Stats. 1990, ch. 466, § 4, pp. 2043-2045.) Several adjustments were made concerning the special revenue and tax problems of school districts. In 1994, the Legislature enacted section 95.3 (Assem. Bill No. 3347 (1993-1994 Reg. Sess.), enacted as Stats. 1994, ch. 1167, § 3, p. 6906), which was later amended.

Presently, subdivisions (a) and (b) of section 95.3 provide in pertinent part as follows:

"(a) Notwithstanding any other provision of law, for the 1990-91 fiscal year and each fiscal year thereafter, the auditor shall divide the sum of the amounts calculated with respect to each jurisdiction, Educational Revenue Augmentation Fund (ERAF), or community redevelopment agency pursuant to Sections 96.1 and 100, or their predecessor sections, and Section 33670 of the Health and Safety Code, by the countywide total of those calculated amounts. The resulting ratio shall be known as the 'administrative cost apportionment factor' and shall be multiplied by the sum of the property tax administrative costs incurred in the immediately preceding fiscal year by the assessor, tax collector, county board of equalization and assessment appeals boards, and auditor to determine the fiscal year property tax administrative costs proportionately attributable to each jurisdiction, ERAF, or community redevelopment agency....

"(b)(1) Each proportionate share of property tax administrative costs determined pursuant to subdivision (a), except for those proportionate shares determined with respect to a school entity or ERAF, shall be deducted from the property tax revenue allocation of the relevant jurisdiction or community redevelopment agency, and shall be added to the property tax revenue allocation of the county...."

In sum, section 95.3 authorizes a county to apportion to itself from tax revenues what the parties variously call a "Property Tax Administrative Funding," or a "Property Tax Administrative Fee," or simply a "PTAF." Using a formula based on a ratio, which the statute calls the "administrative cost apportionment factor," (§ 95.3, subd. (a)) a county's auditor determines the total cost of administering the collection of property taxes and then calculates the share of those costs attributable to each jurisdiction, including community redevelopment agencies. Under subdivision (b)(1), the county deducts this "proportionate share ... from the property tax revenue *724 allocation of the ... community redevelopment agency." The county then adds the deducted amounts "to the property tax revenue allocation of the county." (*Ibid.*) County's deduction of PTAF reduces CRA's net allocation.

Subdivision (e) of section 95.3 states: "(e) It is the intent of the Legislature in enacting this section to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies. The Legislature finds and declares that this section is intended to fairly apportion the burden of collecting property tax revenues and is not a reallocation of property tax revenue shares or a transfer of any financial or program responsibility."

The Pico Union Plan contains a $14 million tax increment limitation divided and allocated over the life of the plan. The tax revenue increment paid to that plan reached the $14 million limitation amount on or about July 20, 1994. CRA thereafter repaid to County an amount above the limitation that had been paid to it by County. As to this plan, CRA receives no further tax increment. But on March 1, 1996, County determined that it was owed an additional $107,113.63-the amount of PTAF owing. County deducted that amount from subsequent allocations to the CRA.

The Crenshaw Plan limits allocation of tax increments to $500,000 per year. In each fiscal year from 1993-1994 through 1997-1998 (except for 1995-1996), the Crenshaw Plan had a tax increment of $500,000. For each of those years, County deducted the PTAF from the tax increment allocation. The total PTAF deducted for this period is $67,261.55. [FN1]

> FN1 The parties agree that the PTAF's for the Crenshaw Plan were as follows: $20,289.26 for 1993-1994; $16,159.91 for 1994-1995; $14,942.76 for 1996-1997; and $15,669.62 for 1997-1998. The sum of these amounts is $67,061.55. (Because of the agreement of the parties, we do not concern ourselves with an apparent $200 discrepancy.)

Initially, the CBD Plan had a $7.1 billion limitation for the life of the plan. In a lawsuit, *Bernardi v. City of Los Angeles* (Super. Ct. L.A. County, 1977, No. C133468), the parties stipulated to a judgment that reduced the limitation to $750 million. That tax increment limitation will be reached in either 2003 or 2004. Upon reaching the limitation, County, using its present methodology, will have, in CRA's view, underpaid CRA approximately $5 million.

Alleging the foregoing amounts are underpayments of, or improper offsets against, its allocation of tax revenue increments, CRA filed a complaint for *725 declaratory relief, writ of mandate, injunction and damages. The complaint alleges that CRA and County dispute the manner in which County is required to apply section 95.3. CRA contends that "the funds allocated and paid to the County pursuant to ... Section 95.3 should not be included as Tax Increment received by [CRA] for purposes of the Tax Increment limitations in" CRA's three plans named above.

The parties stipulated to the operable facts, to the admission of documentary evidence, and to the trial court's use of Legislative Intent Service materials provided to the court. The parties agreed that the matter was entirely one of law.

After the receipt of trial briefs, further declarations and argument, the trial court denied the petition for writ of mandate (the second cause of action) and invited further briefing on whether the court's ruling subsumed the remaining causes of action. Subsequently, the trial court entered a judgment in favor of County, denying all causes of action and dismissing the complaint. The court also filed a written statement of decision.

On appeal, CRA contends that the trial court's interpretation of section 95.3 is erroneous and not consistent with the legislative history or rules of statutory construction. CRA also maintains that under CRA's interpretation of section 95.3, County will be fully compensated for its administrative costs.

Discussion

(1a) The only issue for this court to decide is the application of section 95.3 to County's procedure of deducting the PTAF from CRA's gross allocation of tax increments. County's methodology is, on its face, rational. It also seems to accord with the legislative determination that the county auditor should deduct "[e]ach proportionate share of property tax administrative costs determined pursuant to subdivision (a) ... from the property tax revenue allocation of the ... community redevelopment agency, and ... add[] [it] to the property tax revenue allocation of the county." (§ 95.3, subd. (b)(1).)

As we discern the substance of CRA's proposed interpretation of section 95.3, CRA contends that the section 95.3 funds "are allocated and paid to the County and not to the Agency." CRA in essence claims that County's procedure works an impermissible reallocation of tax revenues. CRA reasons that the section 95.3 "revenues allocated to the County cannot also be allocated to the Agency." Added to this argument is the statement that "The *726 Applicable Statutory Provisions Are Clear." CRA argues then that the deductions should not reduce the total amount of tax revenue increment that the allocation limitations allow and that is actually paid to CRA.

The problem with this argument is that subdivision (b)(1) of section 95.3 expressly states: "Each proportionate share of property tax administrative costs determined pursuant to subdivision (a) ... ***shall be deducted*** from the property ***tax revenue allocation of the ... community redevelopment agency***, and shall be added to the property tax revenue allocation of the county...." (Bold italics added.) On its face, County's procedure is exactly that prescribed in subdivision (b)(1). It is CRA's revenue allocation that is diminished, not County's. This conclusion is bolstered by the legislative intent language in subdivision (e) of section 95.3 that "this section is intended to fairly apportion the burden of collecting property tax revenues." Any other interpretation of

section 95.3 would allow a redevelopment agency, especially where allocation limitations are in effect, to avoid or shift the burden to other agencies or to County.

CRA seeks support for its argument by relying on the Legislature's statement in subdivision (e) of section 95.3 that the section "is not a reallocation of property tax revenue shares ...." We agree with County that such ambiguity as may seem to exist in section 95.3 is reconciled by the Legislature's repeated reference to the PTAF as a "charge" rather than as a tax revenue allocation. For example, in subdivision (d) of section 95.3, the statute specifies that PTAF "shall constitute charges for those services" of "assessing, equalizing, and collecting property taxes" on behalf of the other taxing agencies. Moreover, if the PTAF were merely an allocation of tax revenue to County, rather than to the taxing agencies, no purpose would be served by subdivision (d)'s limitation that this revenue "shall be used only to fund costs incurred by the county in assessing, equalizing, and collecting property taxes, and in allocating property tax revenues ...."

The PTAF was initially promulgated in 1990 as part of Senate Bill No. 2557 (1989-1990 Reg. Sess.) Stats. 1990, ch. 466, § 4, pp. 2043-2045). Both sides and the trial court have referred to Senator Kenneth L. Maddy's letter dated August 31, 1990, respecting the purposes of the bill. With reference to the PTAF, Senator Maddy, as author of the bill and as the state Senate's Republican floor leader, wrote: "Section 4 of the bill authorizes counties to charge a fee to other local jurisdictions for the actual costs of administration of the property tax system .... [¶] It also was the intent that the fees for cities, redevelopment agencies, and special districts be withheld from the respective shares of the property tax of each of these entities." With *727 this pronouncement in mind, the only reasonable interpretation of section 95.3 is that the PTAF is a charge against revenue allocations and was intended to reduce the shares of tax revenue allocated to the local entities.

For its contention that the PTAF deduction should not diminish its revenue allocation (and thus cause the allocation limitations to bar payment of additional increment sooner), CRA relies upon an opinion of the California Attorney General, 76 Ops.Cal.Atty.Gen. 137 (1993). CRA's reliance is misplaced. (2) An opinion of the Attorney General "is not a mere 'advisory' opinion, but a statement which, although not binding on the judiciary, must be 'regarded as having a quasi judicial character and [is] entitled to great respect,' and given great weight by the courts. (*People v. Shearer* (1866) 30 Cal. 645, 652; *Montessori Schoolhouse of Orange County, Inc. v. Department of Social Services* (1981) 120 Cal.App.3d 248, 259 [175 Cal.Rptr. 147].)" (*Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 263 [226 Cal.Rptr. 361].) Whether or not binding on this Court, the opinion cited by CRA does not interpret section 95.3 but rather deals with payments the redevelopment agency may be obligated to make to other governmental entities. Moreover, a careful scrutiny of the opinion reveals that it tends to support the statutory interpretation that the trial court made.

For example, the opinion examines the legislative requirement of a "20 percent set-aside" for low and moderate-income housing. (See Health & Saf. Code, § 33334.2.) The opinion concludes that a redevelopment agency must calculate this 20 percent set-aside "based upon the total tax increment revenues allocated to the agency-irrespective of any subsequent transfers made by the agency to other public entities." (76 Ops.Cal.Atty.Gen., *supra*, at p. 144.) The opinion is based on the plain meaning of the statutes involved in concert with the stated legislative intent. The trial court's-and our-interpretation is likewise based on the plain meaning of section 95.3, supported by evident legislative intent.

CRA's slant on the Attorney General's opinion is not supportive of CRA's position in other respects. The opinion holds that the applicable statutes require that " 'all' taxes allocated to a redevelopment agency ... are to serve as the amount upon which the 20 percent set-aside is calculated.... The statute [i.e., Health and Safety Code section 33334.2] contains no explicit or implicit exception for funds transferred by a redevelopment agency to other public entities." (76 Ops.Cal.Atty.Gen., *supra*, at p. 140.) The opinion holds that the 20 percent set-aside must be applied to the entire allocation even though the allocated revenues are also subject to " 'pass-through agreements' " and other obligations. (*Id.* at p. 138.) Thus, the *728 set-aside amounts must be derived from the gross tax revenue allocated to the agency.

In reaching its ultimate conclusion, the opinion necessarily deals with four other related Health and Safety Code provisions. Concerning section 33401, the opinion holds that it "does not alter the amount of tax increment funds to be allocated to a redevelopment agency" because the statute does not

"allow[] tax increment revenues to bypass a redevelopment agency." (76 Ops.Cal.Atty.Gen., *supra*, at p. 141.) The statute authorizes a redevelopment agency to "pay directly" to "school districts" and other public corporations or governmental districts an amount of money equivalent to the tax revenue the agency would have received on tax exempt property owned by the agency in the project area had that property been taxed. The payments are "passed-through" directly from the tax revenue funds the agency receives as its tax revenue allocation. As with the low-income housing set-aside, this "pass-through" money is deducted from the total amount of tax revenue the agency receives.

Health and Safety Code section 33446 has a purpose similar to that of section 33401 in that it benefits school districts. Section 33446 allows the redevelopment agency to construct buildings for use by a school district with title eventually vesting in the district. But instead of tax revenue funds "passing-through" to the school district, the agency directly expends its redevelopment funds for construction. The Attorney General's opinion observes: "Unquestionably the revenues involved in the expenditure have already been allocated to the redevelopment agency under the terms of section 33670 and are therefore subject to the 20 percent set-aside provision of section 33334.2." (76 Ops.Cal.Atty.Gen., *supra*, at p. 142.) [FN2]

> FN2 In passing, we note that a redevelopment agency's school construction expenditures may in fact be paid from its financing (e.g., government guaranteed bonds), rather than from its tax revenue allocations. Nonetheless, in paying off the bonds with its tax increment, the agency ultimately pays for the school construction from its allocations.

The Attorney General's opinion lastly analyzes Health and Safety Code section 33676. But the opinion concludes that this provision differs from the other four. The opinion states that section 33676 "has the effect of directly allocating to other public entities certain portions of the tax revenues that would ordinarily be allocated to a redevelopment agency" and these revenue funds, "unlike those subject to pass-through agreements, do in fact bypass the redevelopment agency through the allocation procedure." (76 Ops.Cal.Atty.Gen., *supra*, at p. 143.)

(1b) In summary, the Attorney General's opinion shows that the Legislature in plain language requires that set-aside and pass-through funding that *729 a redevelopment agency provides to benefit school districts and other public entities to offset some of the consequences of redevelopment are drawn from the tax revenue allocated to the agency. We see no significance in the fact that the redevelopment agency, rather than the taxing agency, actually deducts the funds from the allocation. The result is the same in either case: a diminution of the amount of funds the redevelopment agency has to apply to the project's other financial obligations.

The plain language of the statute here permits County to deduct the PTAF from CRA's tax increment allocation and is in harmony with the legislative intent to allow counties to cover their administrative costs. To follow CRA's interpretation of section 95.3 would allow redevelopment agencies with capped plans to avoid those costs. If the deduction did not reduce the capped allocation, CRA would in essence, under the circumstances pertinent here, recover its PTAF payments in the year it reached the cap limit. Moreover, this recovery would be at the expense of other local entities.

CRA also attempts to bolster its contention that section 95.3 is a reallocation, as opposed to the collection of the PTAF as a charge, by reference to the language of the California Constitution. Section 16, subdivision (b), of article XVI, to which CRA refers, does provide that the tax revenue increment from a redevelopment plan area "shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency ...." CRA grasps this provision to contend at least implicitly that any interpretation of section 95.3 that permits the PTAF to be deducted from CRA's revenue allocation violates the constitution. This contention is without merit and attempts to resurrect a claim previously rejected by another division of this Court.

In *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444 [20 Cal.Rptr.2d 112], a redevelopment agency challenged the imposition of the PTAF as to redevelopment agencies as presented by chapter 466 of Statutes 1990. The agency claimed that it was impermissible to reduce the agency's tax revenue receipts because the California Constitution-specifically article XVI, section 16-protected this funding, rendering it mandatory. (*Arcadia Redevelopment Agency v. Ikemoto*, *supra*, 16 Cal.App.4th at pp. 448-451.) Division Three of this district of the Court of Appeal rejected the contention and found that section 16 of article XVI "does not

revent the Legislature from altering the levying and ollection of taxation on redevelopment project property in a manner consistent with which it alters the levying and collection of taxation on other property." (16 Cal.App.4th at p. 452.) Whether a redevelopment agency's tax revenues are reduced by a *730 proper alteration of the levy and collection of taxes or by a charge for administrative costs, the principle is the same. The Legislature is so empowered as long as it acts with an even hand. Thus, Division Three upheld the statute against the constitutional challenge. (*Id.* at p. 446.) We explicitly approve and adopt the rationale of the *Aroadia* opinion.

In addition, we observe that the language in section 16 of article XVI of the California Constitution that the tax revenue "shall be allocated to and when collected shall be paid" to the redevelopment agency is not inconsistent with section 95.3. A redevelopment agency ultimately pays all of its financial obligations from its tax revenue allocations. The PTAF is a proper obligation and payable to the county administering and collecting the taxes. Whether deducted up front or paid upon presentment of an invoice, the effect should be the same: the agency's tax revenue income is reduced by the eduction or payment.

The remainder of CRA's arguments focus on the purposes and intentions of the Legislature. In the main, these arguments stress the lack of legislative intent evidence respecting other statutes related to tax revenue allocation for redevelopment plans. Reduced to its essentials, CRA argues that there was no legislative intent that the PTAF should reduce the allocations of capped plans. Resort to the absence of legislative intent material is not helpful and does not demonstrate the proposition CRA urges. Here, section 95.3 proclaims that the PTAF is to "be deducted from the property tax revenue allocation of the ... community redevelopment agency." (Subd. (b)(1).) The statute further states that the PTAF "shall constitute charges for those services" (subd. (d)) and that it "is intended to fairly apportion the burden of collecting property tax revenues." (Subd. (e).) In this complex area of property tax and redevelopment finance, clearer statements of procedure and purpose would be difficult to achieve. Because the statute is sufficiently clear in method and intent and because County's implementation does not conflict with the process and procedure set forth in section 95.3, we uphold the trial court's determination.

Disposition

The judgment is affirmed.

Cooper, J., and Doi Todd, J., concurred. *731

Cal.App.2.Dist.,2001.

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.

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COMPTON COMMUNITY COLLEGE FEDERATION OF TEACHERS, AFT LOCAL 3486, AFL-CIO, Plaintiff and Appellant,
v.
COMPTON COMMUNITY COLLEGE DISTRICT et al., Defendants and Respondents.
No. B005434.

Court of Appeal, Second District, California.
Feb 27, 1985.

SUMMARY

A teachers' union signed a collective bargaining agreement with a community college district providing for teacher salary raises for the 1981-1982 and 1982-1983 fiscal years, with the 1981-1982 raise retroactive to the beginning of that fiscal year. However, the school district ran short of funds to pay the retroactive increase in the 1981-1982 fiscal year, and in the following year declined to pay, contending it was precluded from doing so by Cal. Const., art. XVI, § 18, prohibiting any local body from incurring any liability exceeding in any year the revenue provided for such year. The union's petition for a writ of mandate to compel payment was denied. (Superior Court of Los Angeles County, No. C 427803, Leon Savitch, Judge.)

The Court of Appeal reversed and remanded for further proceedings, applying an exception to the debt limitation provision for expenditures imposed by law. The court held the law imposed a specific duty to provide an education and to employ teachers to do so, and further imposed an independent duty not to reduce teacher salaries during a contract year, which meant that the obligation to pay the retroactive raises was not a debt voluntarily incurred by the school district, but one imposed by law, and, as such, the salary obligations were exempt from the constitutional debt limitation and could be paid out of the district's income from future years. The court further held the teachers' union did not establish its right to attorney fees under Code Civ. Proc., § 1021.5. (Opinion by Johnson, J., with Lillie, P. J., and Thompson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Schools § 28--Compensation of Teachers-- Insufficient Funds--Payment in Succeeding Years--Constitutional Debt Limitation--Exception.
Where a collective bargaining agreement with a community college district signed in 1982 provided for teacher salary raises for the 1981-1982 and 1982-1983 fiscal years, with the 1981-1982 raise retroactive to the beginning of that fiscal year, but where the district was short of funds to pay the retroactive increase in 1981-1982, neither Cal. Const., art. XVI, § 18, prohibiting any local body from incurring any liability exceeding in any year the income provided for such year, nor Ed. Code, § 72500, restating the constitutional debt limitation, precluded the school district from paying the raise out of income from future years. An exception to the debt limitation provision exists in the case of obligations imposed by law; the law imposed a specific duty to provide an education and to employ certified teachers (Ed. Code, § 72290, 87211, 87274-87277 and 87289-87290), and a further duty not to reduce salaries during a contract year. Thus, payment of the retroactive increase was a duty imposed by law and was exempt from the debt limitation provision.
[See **Cal.Jur.3d,** Schools, Public Funds, §§ 4, 28; **Am.Jur.2d,** Schools, § 99 et seq.]
(2) Schools § 29--Compensation of Teachers--Increase in Salary-- Retroactivity.
Retroactive raises for teachers negotiated in a collective bargaining agreement did not represent unearned payments for past services, but rather were part of the compensation earned as the services were rendered.

(3a, 3b) Public Funds § 5--Expenditures--Constitutional Limitation-- Liability in Excess of Current Income--Exception--Duty.
Only if the law imposes on a local government a specific duty to expend its money on a certain function will those expenditures be exempt from Cal. Const., art. XVI, § 18, prohibiting any local body from incurring any liability exceeding in any year the revenue provided for such year. However, it is not required that the law set the exact amount of the expenditure.

(4) Costs § 7--Amount and Items Allowable--Attorney Fees--Public Benefit-- Salary Increase for Teachers.
A teachers' union which prevailed in an action for retroactive backpay, as against the contention payment was barred by the debt limitation provisions of Cal. Const., art. XVI, § 18, did not establish its right to attorney fees under Code Civ. Proc., § 1021.5. Although it met two of the necessary criteria (enforcement of important public right conferring significant benefit), it failed to show the necessity and financial burden of private enforcement was such as to make the award appropriate; that the legal costs were extraordinarily large; that the union was so small it lacked the funds to protect its members' interests; that the benefits to nonlitigants were out of proportion to the benefits received by the membership; or that legal costs were so high and the litigants' benefits so modest there would be no net recovery.

COUNSEL

Lawrence Rosenzweig for Plaintiff and Appellant.

O'Melveny & Myers, Richard N. Fisher, Diane B. Patrick, Jones & Matson, Urrea C. Jones, Jr., Stephan K. Matson, De Witt W. Clinton, County Counsel, Allan B. McKittrick, Assistant County Counsel, Steven J. Carnevale and Paula A. Snyder, Deputy County Counsel, for Defendants and Respondents.

JOHNSON, J.

This case poses an issue of considerable importance to teachers and school districts. Many districts unilaterally cut teacher salaries during a contract year in order to adjust to lower revenues and then bar the teachers from recovering their lost salary payments in later years by invoking a constitutional provision which prohibits local districts from using income from one fiscal year to pay obligations incurred in another fiscal year. We conclude the answer is no and thus reverse the trial court's refusal to grant mandamus to the teachers.

I. Facts and Proceedings Below

In the spring of 1982 the Compton Community College District (the District) engaged in collective bargaining negotiations with its teachers represented by the Compton Community College Federation of Teachers, AFT Local 3486, AFL-CIO (the Teachers). On March 9, 1982, the parties signed an agreement covering the current academic year (1981-1982) and the next year (1982-1983). Among other things this agreement called for salary raises of 8.7 percent for part-time faculty and 8.5 percent for full-time faculty. These raises were to be retroactive to the beginning of the current fiscal year, July 1, 1981.

The District implemented the prospective raises immediately. However, it delayed payment of the retroactive portions of the agreed-upon compensation ***85** clauses of the contract. Finally, on June 18, 1982, the Teachers' lawyer wrote the District requesting compliance. Receiving no response, the Teachers filed a formal grievance against the District on June 22, 1982. At that point, the District concluded it was over $400,000 short of the revenues needed to honor the retroactive component of its contractual obligations to its Teachers. [FN1]Nonetheless, on July 2, the District responded to the grievance with a letter promising "to have a more accurate estimate of both the amounts and dates of income receipts" and to "attempt to establish the most reasonable early target date for issuance of retroactive checks."

> FN1 The reasons for the 1981-1982 revenue shortfall were three-fold. (1) The District made a $409,000 "accounting error" in calculating the carryover available from the 1980-1981 academic year. (2) Nonresident tuition was $325,000 less than anticipated because fewer nonresidents attended than the District expected. (3) The state government caused a $779,000 revenue loss by imposing a cap on enrollment-based state payments to community colleges.

At the same time it was refusing to pay its faculty members their retroactive raises the District was busy borrowing funds to discharge other obligations accumulated during 1981-1982. Education Code section 84309 authorizes education districts to obtain emergency apportionments from the state when income is not enough to meet expenses. Pursuant to this authority, the District sought and received a $750,000 "revenue apportionment advance" from the state to meet its 1981-1982 obligations. Later this advance was converted into a loan payable over the

three years.

During summer and fall 1982 the District made some attempts to honor its contractual obligations to its faculty. At a special board meeting on July 19 the District expressed "its intention to adopt a resolution authorizing a one-time, lump-sum bonus payment to eligible employees in connection with the retroactive emoluments approved by the board earlier in the year. Payment is to be made from 1982-83 revenue as soon as funds are available and legal requirements for their disbursement have been met." On August 24 the District superintendent went so far as to prepare a resolution for board approval authorizing payment of bonuses to all employees who were due retroactive raises. These bonuses were to come out of 1982-1983 income. However, before he could proceed further he received an opinion from the county counsel's office. The opinion stated payment of the bonuses would violate the debt limitation found in article XVI, section 18 of the California Constitution. This constitutional provision prohibits local government bodies-including school boards-from incur"[ring] any ... liability ... exceeding in any year the ... revenue provided for such year ...." (Cal. Const., art. XVI, § 18.)***86**

Despite the county counsel's advice, the District board on September 14 ordered $350,000 in warrants to be issued to those employees who were owed retroactive salary payments. The order for warrants was submitted to the Los Angeles County Superintendent of Schools (the County Superintendent), who also is a respondent in the instant case. On September 16 the county division of school financial services issued a notice of nonapproval rejecting the District's warrants. The County Superintendent also based this decision on article XVI, section 18 of the California Constitution.

The District's financial crisis continued through the 1982-1983 academic year. At some point during the year the District, which until that time had been striving to honor its contractual commitment to its faculty, shifted positions. The District began contending it could not afford to reimburse its teachers for the retroactive salary raises it failed to pay during 1981-1982.

On October 7, 1982, the Teachers filed a petition for peremptory writ of mandate in superior court against the District, the board of trustees of the District, the District's president and the county superintendent. The petition sought an order requiring the respondents to pay the full compensation the District had contracted to do in 1981-1982. Nearly a year later, on September 30, 1983, the trial court heard the petition, including extensive evidence about the then current state of the District's finances. A judgment denying the petition was filed on November 9 and the Teachers appealed on December 12, 1983. Briefing was completed on September 12, 1984.

II. Discussion

The trial judge astutely recognized this to be a difficult case. He was right. Before rendering judgment he said, "Let the appellate court settle it." In doing so we reverse the trial court's judgment but fully sympathize with the difficulty of making sense of the apparently conflicting decisions in this area of the law.

(1a)We begin by analyzing the facts to derive the real issue raised by this case. We conclude that question is whether a school district may reduce the salaries of its teachers unilaterally and retroactively during a contract year as a means of complying with California's constitutional debt limitation. We then briefly discuss the constitutional debt limitation and its exceptions. We find one of those exceptions applies in this case. The law imposes a specific duty to provide an education and to employ teachers to do so. It further imposes an independent duty not to reduce teacher salaries during a contract year. These legal duties mean the obligation to pay the retroactive raises is not a debt voluntarily incurred by the school district but ***87** one "imposed by law." As such, these salary obligations are exempted from the constitutional debt limitation and may be paid out of the District's income from future years.

A. What the Compton College District Did Amounted to a Unilateral, Retroactive Reduction in Faculty Salaries During the Contract Year

On the surface it appears the Compton College District merely withheld the retroactive portion of a raise negotiated with its faculty. Indeed it did. The implication is that somehow the teachers did not have as strong a claim to this money as they do to the prospective component of their raise or to the salary level they had received the previous year. Properly

analyzed, however, the retroactive raise has the same legal status as any other part of the faculty's compensation.

Collective bargaining negotiations are merely one way of arriving at a salary schedule to be offered teachers for a year's worth of teaching. Of course, when faculty members are organized in a union this generally is the only way of determining that schedule. Still the salary scale established through those negotiations has the same legal effect as one a school board might set unilaterally and offer to its tenured and untenured faculty members.

When collective bargaining is involved, the negotiations ideally are completed and the salary schedule fixed before the contract year begins. If that had happened in the instant case, the Compton College faculty would have been receiving monthly paychecks throughout 1981-1982 which were more than 8 percent higher than 1980-1981 -at least until the District discovered its $400,000 "accounting error" and other revenue shortfalls. (The District also would have paid them the one-time bonus and increased fringe benefits the contract promised.)

Just because the parties were some nine months into the 1981-1982 year before they finally reached agreement on the contract terms does not alter the District's obligation to pay the full annual salaries called for in the schedule based on the contract it eventually signed. The retroactive payments are merely a part of those full annual salaries. (2)California courts have specifically ruled retroactive raises of this nature do not represent unearned payments for past services. Rather they are considered a part of the compensation earned as the services were rendered. (*San Joaquin County Employees' Assn., Inc. v. County of San Joaquin* (1974) 39 Cal.App.3d 83 [113 Cal.Rptr. 912] and *Goleta Educators Assn. v. Dall'Armi* (1977) 68 Cal.App.3d 830 [137 Cal.Rptr. 324]. Both of these Court of Appeal decisions ***88** were expressly approved and relied on in *Jarvis v. Cory* (1980) 28 Cal.3d 562, 570-72 [170 Cal.Rptr. 11, 620 P.2d 598].)

(1b)What the District did in this case is nothing less than a retroactive reduction in the annual salary schedule the District had set for its teachers for the 1981-1982 academic year. In practical effect, it is as if the District had refused to give its teachers their last month's salary checks or had deducted about 8 percent from each month's check throughout the year. Accordingly, if the Compton College faculty members would have been entitled to compel distribution of their final month's paychecks they are entitled to recoup their retroactive raise checks.

B. The Constitutional Debt Limitation and Its Exceptions

The District does not deny it violated its contract with the Compton College faculty by refusing to make the retroactive salary payments. Nor do the other respondents claim the District could excuse its refusal on this grounds. Instead all the respondents rely on article XVI, section 18 of the California Constitution which reads: "No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, ..." (Cal. Const., art. XVI, § 18.)

This section-formerly article XI, section 18-has been part of the California Constitution since 1879. After reviewing the debates at the constitutional convention, the Supreme Court concluded this provision was aimed at "the practice prevalent both in California and in the eastern states, a practice that has grown rapidly of late years, of extravagance and expenditure in engaging in improvements of various kinds which has resulted in an enormous increase of municipal indebtedness." (*City of Long Beach v. Lisenby* (1919) 180 Cal. 52, 56 [179 P. 198].)

Thus the original evil the predecessor of article XVI, section 18 sought to address had to do with local government bodies which made extravagant capital investments creating huge long term debts. Had the California courts limited the provision to this central problem the instant case would not be before this court. However, early on they construed it to bar short term overexpenditures as well.

As early as 1882, the Supreme Court ruled the constitutional debt limitation barred a gas company from collecting on a contract for delivering gas ***89** to the City of San Francisco because the city had exhausted its finances for that year. (*San Francisco Gas Co. v.*

Brickwedel (1882) 62 Cal. 641.) This principle was followed to deny payment of contracts to boss a chain gang, (*Shaw v. Statler* (1887) 74 Cal. 258 [15 P. 833]), and for the sale of merchandise (*Schwartz v. Wilson* (1888) 75 Cal. 502 [17 P. 449]).

In 1895, the Supreme Court held a judgment for merchandise sold to a city government was uncollectible because there was a deficiency in the general fund for the year when the city purchased the merchandise. (*Smith v. Broderick* (1895) 107 Cal. 644 [40 P. 1033].) Moreover, the court held the judgment creditor could not look to tax revenues from later years. (107 Cal. at pp. 654-655.) Similarly, in 1896 the Supreme Court rejected the claim of a plumbing contractor who had supplied services to the municipality of San Francisco the previous year. Unfortunately for him, the city had underestimated certain other costs for that year. Thus the municipal coffers were bare by the time his bill arrived. The court held the city could not pay him for the services rendered in that year out of revenues received in later years. In doing so, it issued a stern warning to those who venture to contract with local governments: "Whoever deals with a municipality does so with notice of the limitation of its powers, and with notice also that he can receive compensation for his labor or materials only from the revenues and income previously provided for the fiscal year during which his labor and materials are furnished; ... Even though at the time of making his contract there are funds in the treasury sufficient to meet the amount of his claim, he is charged with notice that these funds are liable to be paid out for municipal expenditures before his contract can mature into a claim against the city, ..." (*Weaver v. San Francisco* (1896) 111 Cal. 319, 325-326 [43 P. 972].)

Or as the court put it even more succinctly in *McBean v. City of Fresno* (1896) 112 Cal. 159, 165 [44 P. 358], "If there are not revenues for any given year sufficient and available for the payment of his claims for that year, those claims become waste paper, ..." To the same effect, see, e.g., *Bradford v. San Francisco* (1896) 112 Cal. 537 [44 P. 912] [city enjoined from incurring debt after it ran out of money two months before end of fiscal year and also enjoined from levying high taxes the next year to make up the deficit]; *Montague v. English* (1897) 119 Cal. 225 [51 P. 327] [contract for water pipe enforceable only out of revenues for year when obligation matured even though there had been sufficient public moneys available at the time the contract was signed and the pipe delivered]; *Higgins v. San Diego Water Co.* (1897) 118 Cal. 524 [50 P. 670],overruled *Miller v. McKinnon* (1942) 20 Cal.2d 83 [124 P.2d 34, 140 A.L.R. 570], [water company entitled to judgment without direction as to source of revenue for services rendered in year where city had exhausted funds but judgment only ***90** collectible if voters subsequently approved payment from future year's revenues].

It is this harsh medicine from the 19th century which respondents seek to feed the Compton College faculty. However, the 19th century also witnessed the birth of an exception to the constitutional debt limitation. In 1893, the City of San Francisco ran out of money before it had paid the final month's salary of the chief clerk in the office of the registrar of voters. The city refused to pay this salary out of the next year's revenues for fear it would violate the constitutional debt limitation. The Supreme Court ruled this limitation did not bar this payment even though it would not come from revenues of the year when the salary was earned. The court's rationale created an exception the Compton College faculty seeks to invoke. "The clear intent expressed in the [constitutional debt limitation] was to limit and restrict the power of the municipality as to any indebtedness or liability which it has discretion to incur or not to incur. But the stated salary of a public officer fixed by statute is a matter over which the municipality has no control, and with respect to which it has no discretion; and the payment of his salary is a liability established by the legislature at the date of the creation of the office. It, therefore, is not an indebtedness or liability incurred by the municipality within the meaning of ... the constitution.

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"'Salaries are not liabilities against the treasury which rest upon any authorization or contract by the board of supervisors, or any other officer. They are fixed by law, and are not subject to the control of such officers. They are payable out of the general fund, and are not limited to any particular part of that fund which the board may choose to set apart for their payment.' [Quoting with approval from *Welch v. Strother* (1887) 74 Cal. 413.]

"Our conclusion is that the payment of the salary of a public officer whose office has been created and salary fixed by law, either statutory or constitutional, is not within the provision of [predecessor of art. XVI, § 18] of the constitution; that his salary is to be paid out of said general fund when there is sufficient money therein without regard to revenues of separate years; and that it was a duty specially enjoined by law upon respondent to pay the said audited demand of petitioner when it was presented on said third day of July." (*Lewis v. Widber* (1893) 99 Cal. 412, 413, 415 [33 P. 1128].)

The language of *Lewis v. Widber* suggests this exception only applies when both the existence of an obligation and its precise amount are imposed ***91** on the municipality by state law. However, over the years the exception has broadened well beyond the words of this seminal opinion. [FN2]

> FN2 One Court of Appeal opinion also construed *Lewis v. Widber* to limit this exception to public officers as opposed to employees. *Martin v. Fisher* (1930) 108 Cal.App. 34 [291 P. 276],disapproved *Gassman v. Governing Board* (1976) 18 Cal.3d 137 [133 Cal.Rptr. 1, 554 P.2d 321]. Later authority is to the contrary. *Lotts v. Board of Park Commrs.* (1936) 13 Cal.App.2d 625 [57 P.2d 215] [holding the constitutional debt limitation does not apply to back pay awards to salaried employees even though they were not public officers]. So is the logic of the "imposed by law" exception as applied to types of relationships-contractual and otherwise-which are similar to that of employer-employee. See pages 91, 93-94, *post*.

In *County of Los Angeles v. Byram* (1951) 36 Cal.2d 694 [227 P.2d 4], the Supreme Court held the cost of constructing a courthouse was not subject to the constitutional debt limit because the county had a legal duty to provide "adequate quarters" for the courts. This legal duty was enough to avoid the debt limitation even though the county had a great deal of discretion in deciding what kind of courthouse to supply and how much to invest in it. "Since a specific mandatory obligation has been imposed on the county by the Legislature to provide suitable quarters for the courts in that county, the present facilities are not adequate, and the board of supervisors has determined that the proposed construction is necessary, we have an express law-imposed obligation on the county which is not general, ... and the debts incurred in the performance of that duty are not within the debt limitation." (36 Cal.2d at p. 700.) In a similar decision, the Court of Appeal also exempted the cost of building police and fire stations from the constitutional debt limitation. (*City of LaHabra v. Pellerin* (1963) 216 Cal.App.2d 99 [30 Cal.Rptr. 752].) Once again state law only created the duty to construct something to house police and fire services. The nature and cost of these buildings were issues within the discretion of local government. Nonetheless, this was enough of a legal duty to satisfy the "imposed by law" exception to the constitutional debt limitation.

California courts have drawn a line, however, between "general" legal duties and "specific" legal duties. It is not enough the Legislature enacts a law imposing a "general" duty on local government to perform some function. (3a) Only if the law imposes a "specific" duty to expend its money on that function will those expenditures be exempt from the constitutional debt limitation. (See, e.g., *Pacific Undertakers v. Widber* (1896) 113 Cal. 201 [45 P. 273]; *Arthur v. City of Petaluma* (1917) 175 Cal. 216 [165 P. 698].)

The problem is defining what counts as a "specific" legal duty as opposed to only a "general" one. We have already seen that the statute requiring "adequate quarters" for the courts was deemed sufficiently specific to avoid ***92** the constitutional debt limitation. So was the duty to have a chief clerk in the registrar of voters office. In contrast, the statutory duty to bury indigents was found to be too "general" to justify an exemption for a private undertaker who contracted to provide that service for the city.

A printer fared no better in *Arthur v. Petaluma*, *supra.*, in seeking to recover the cost of publishing a city charter. The Supreme Court acknowledged state law required publication of a city charter if a city wanted to move to that status. However, the initial decision to become a charter city was discretionary with the local government. Hence state law did not impose a specific duty to spend municipal funds for the publication the unlucky printer performed.

Pacific Undertakers and *City of Petaluma* under-

scored that the duty imposed on local government must be truly mandatory. In *Pacific Undertakers* the state required some provision be made for burying deceased indigents. However, it did not insist that localities contract with private undertakers rather than using their own employees to carry out this duty. And in *City of Petaluma* the state only told local governments what they had to do if they wanted to become charter cities. The state did not require every city to seek this status. Hence in both instances the court found the expenditures were discretionary acts of local government bodies not expenditures mandated by the state.

C. (1c)California Law Imposes a Specific Duty on the Compton College District to Employ Teachers and Not to Reduce Their Compensation During the Contract Year

The duty begins with the California Constitution which makes education one of the highest priorities of state and local government. (Cal. Const., art. IX, §§ 1, 5; art. XVI, § 8; *Serrano v. Priest* (1976) 18 Cal.3d 728, 763-67 [135 Cal.Rptr. 345, 557 P.2d 929],cert. den. *Clowes v. Serrano* (1977) 432 U.S. 907 [53 L.Ed.2d 1079, 97 S.Ct. 2951].)Education Code section 72290 requires each district to employ and assign instructors and other personnel. Nor is a district free to hire anyone it wants as instructors. Sections 87211, 87274-87277 and 87289-87290 describe the qualifications and certification required of persons a District employs to educate its students.Government Code section 3543.2 makes the duty still more specific. It requires community college districts to set salary schedules after engaging in good faith bargaining about "wages, hours of employment, and other terms and conditions of employment." (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 856 [191 Cal.Rptr. 800, 663 P.2d 523].)***93**

Thus, the Compton College District had a specific duty to employ the teachers needed to provide education to its citizens and to pay them according to a set salary schedule. This is not a case, like *City of Petaluma*, where the District had a choice whether to engage in the activity which triggered the state-mandated expenditure. Here the District had a statutory duty to provide education and to employ those needed to carry out that function. Nor is this case like *Pacific Undertakers*, where the state-mandated function could be provided in a number of ways by different sorts of personnel. Here the District is required to hire its own employees to provide the instruction - rather than perhaps contracting with private firms to do so. Moreover, the function of teaching can only be done by teachers who meet certain state-mandated qualifications as opposed to what was involved in *Pacific Undertakers*-a grave-digging task which could be accomplished by anyone capable of wielding a pick and shovel.

Respondents argue the District had no specific duty to arrive at any particular salary schedule during collective bargaining negotiations. This was a matter within the District's discretion. Accordingly, respondents contend, whatever salary levels the District agreed to constitute a liability created by the District during 1981-1982 and are subject to the constitutional debt limitation.

(3b)However, this argument assumes the law must not only impose a duty to incur an expenditure but must also set the exact amount of that expenditure. Although this construction finds some support in certain language in *Lewis v. Widber, supra.*, 99 Cal. 412, subsequent cases have removed this restriction on the "imposed by law" exception to the constitutional debt limit. (See cases discussed at p. 91,*ante*.)

A decade ago, this modern view of the "imposed by law" exception was applied to a situation quite analogous to the instant case - *Wright v. Compton Unified Sch. Dist.* (1975) 46 Cal.App.3d 177 [120 Cal.Rptr. 115]. In that case, the school district employed a private lawyer to represent several district officials and employees who were charged with defamation. State law imposes a duty to provide legal representation in this circumstance at district expense. However, it does not require the district to pay the attorney a specific total fee or to limit the attorney to a certain hourly rate. Indeed it gives the district discretion to use a salaried public lawyer rather than a private attorney. Nonetheless, the court ordered the district to pay the lawyer his fees even though it had already exhausted its revenues for the years he had billed.

The Court of Appeal ruled the constitutional debt limitation was no bar to recovery. "[T]his ... limitation does not apply to an obligation or liability ***94** imposed by law as distinguished from one voluntarily

incurred. [Citations omitted.]

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"Government Code section 995 expressly imposes upon a public entity ... the specific duty to provide a defense for its employees to civil actions brought against them which arise out of acts performed in the scope of their employment. In the instant case, the fulfillment of such duty ... took the form of a contract between the district and plaintiff. The obligation represented by the contract, being one imposed upon the district by law, was not subject to the debt limitation .... This conclusion is strengthened by the fact that ... [the district] in employing plaintiff to defend its employees, discharged its duty in a manner expressly provided by law. [That is, by employing a private lawyer as authorized but not mandated under Gov. Code, § 996.]

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"The result is that ... a school district is liable for obligations imposed by law even though they exceed in any year the money available to the district in that year." (*Wright v. Compton Unified Sch. Dist., supra.*, 46 Cal.App.3d at pp. 181, 183, 184. Sentence in brackets added for clarification.)

In *Wright*, as in the instant case, the law imposed a duty to perform a certain function. In *Wright* it was to provide a legal defense; here it is to provide a post secondary education. And in *Wright*, as in the instant case, the law imposed a duty to employ members of a certain occupation to perform that function-in *Wright*, lawyers, in this case, teachers. But in both *Wright* and our case the school district had discretion to negotiate whatever compensation levels it wanted to with the individuals hired to discharge the mandated function. Yet the *Wright* court found the state had imposed a sufficiently specific duty to exempt the agreed-upon compensation from the constitutional debt limitation. (1d)We likewise conclude the duties imposed on the Compton College District justify exempting teacher salaries from that same constitutional provision.

There is a second and independent reason the District had a legal duty to pay the full amount of the salaries it negotiated with its teachers-including the retroactive raise portions of those salaries-for 1981-1982. This follows because the law imposes a specific duty on local districts to maintain faculty salaries at the level set by contract for the full contract year. Thus, even if ***95** there was no legal obligation to provide an education or to employ teachers or to negotiate with them about salary, the District nonetheless did have a duty not to reduce any teacher salaries it might have voluntarily contracted to pay. As the Supreme Court observed 50 years ago: "'The Legislature in this state designed to give to teachers ... a permanency of tenure, but this has ... been held to carry with it no assurance against change in salary .... The power of the trustees to raise or reduce the salaries of permanent teachers cannot be doubted, *provided ... no attempt is made* after the beginning of any particular school year *to reduce the salaries for that year.*'" (*Abraham v. Sims* (1935) 2 Cal.2d 698, 711 [42 P.2d 1029], italics added. See also *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 930 [120 Cal.Rptr. 707, 534 P.2d 403]; *A.B.C. Federation of Teachers v. A.B.C. Unified School District* (1977) 75 Cal.App.3d 332, 337-338 [142 Cal.Rptr. 111]. See also Education Code section 87743 which does not allow teachers to be terminated for lack of attendance-and attendant shortage of revenues -until the *close* of the school year.)

It makes no difference how the board arrives at the salary levels for the year-whether by negotiations with a union or by contracting with individual teachers on a case by case basis or by establishing a standard salary schedule. Once the amount is set, it cannot be reduced *during that year*. In the instant case, the salaries were set on the basis of collective bargaining negotiations. But that does not lessen the duty to pay the full salary agreed upon for the year. True, the board is free to negotiate a lower salary for the next bargaining period. But this does not mean it can reduce the 1981-1982 salary below the levels agreed upon during the negotiations for that year. [FN3]

FN3 The District cites Education Code section 72500 as a further debt limitation on boards of education. This section provides in pertinent part that "[t]he governing board of any community college district is liable ... for all debts and contracts, including the sal-

> ary due any instructor not made in excess of the moneys accruing to the District and usable for the purposes of the debts and contracts during the school year for which the debts and contracts are made." However, in *Wright v. Compton Unified Sch. Dist., supra.*, 46 Cal.App.3d 177, 183-184, the court held this statutory provision merely restates the constitutional debt limitation and is not an independent limitation on school board spending. "The result is that, under both the Constitution and the statute, a school district is liable for obligations imposed by law even though they exceed in any year the money available to the district in that year." (46 Cal.App.3d at p. 184.)

D. The Constitutional Debt Limitation Does Not Bar the Payments Required to Restore the Illegal Retroactive Reductions in Faculty Salaries for the 1981-1982 Fiscal Year

The Compton College District Board did not have the discretion to reduce the salaries of its faculty for 1981-1982 once the salary schedule was set in March 1982. It nevertheless attempted to do so by withholding the retroactive ***96** portion of the raise component of the 1981-1982 schedule. The payments required to restore these salary reductions do not represent obligations the local district voluntarily incurred. Rather they are expenditures state law requires it to make. Consequently, these expenditures are not barred by the constitutional debt limitation and can be made out of revenues and income from later fiscal years.

In many respects this case resembles *Lotts v. Board of Park Commrs.* (1936) 13 Cal.App.2d 625 [57 P.2d 215]. There a local board attempted to convert several full-time employees to part-time status. The court ruled this action improper. The board next contended the constitutional debt limitation nevertheless precluded it from repaying these employees for the difference between part-time and full-time pay during the years the illegal reclassification was in effect. But the court rejected that argument also in language very relevant to this case. "It has been repeatedly held by the courts of this state that [the constitutional debt limitation] refers only to an indebtedness or liability which one of the municipal bodies ... has itself incurred .... [Citation omitted.] The clear intent expressed in the constitutional clause was to limit and restrict the power of the municipality as to any indebtedness or liability which it has discretion to incur or not to incur, and in our opinion the *salary due an employee is* an obligation of the city *not responsive to* [*the constitutional debt limitation*]." (Italics added.) (13 Cal.App.2d at p. 635.)

The *Lotts* opinion appears to hold all public employee salaries are exempt from the constitutional debt limitation. However, we need not go that far to sustain the payments to Compton College faculty members. In *Lotts* the local government had wrongfully reduced its employees' salaries by forcing them to accept part-time status. Here the District wrongfully reduced its faculty salaries by simply withholding a portion of their annual salaries. In both situations the law creates a duty to restore the illegal cuts. Thus, in both situations repayment is not an obligation voluntarily assumed by local government; it is a duty imposed by law. As such, the repayments are not subject to the constitutional debt limitation either in *Lotts* or in the instant case. [FN4]***97**

> FN4 Two Court of Appeal opinions decided before *Lotts* appear to take a different view. (*Martin v. Fisher, supra.*, 108 Cal.App.34, 41; *Briney v. Santa Ana High School Dist.* (1933) 131 Cal.App. 357, 363-364 [21 P.2d 610],disapproved in *Gassman v. Governing Board, supra.*, 18 Cal.3d 137.) Both involved suits for backpay by teachers who allegedly had been wrongfully discharged and thus had not actually taught during the years for which funds were exhausted. In each case, the teacher was reinstated. But in each the court refused to order backpay in the absence of a showing the district had unexpended funds remaining for the years the teacher was wrongfully prevented from teaching. The *Martin* court (*Briney* merely quoted and relied on the *Martin* rationale) reasoned the school board would have been entitled to dismiss the plaintiff during the year it was short of funds on grounds it did not have the money to pay her, even if it could not dismiss her for the reason it did. Consequently, the teacher had no claim to backpay for that year. In the instant case, in contrast, the teachers involved were not dismissed for shortage of funds or any other reason. Indeed they actually performed the

services for which they seek the full pay they were promised for those services. So this case is easily distinguishable from *Martin* and *Briney*.

Indeed the *Lotts* court found it unnecessary to even mention to say nothing of distinguishing *Martin* and *Briney* when confronted with a situation comparable to the instant case. In *Lotts*-as in the case before us-the employees actually had worked during the fiscal period for which the local agency claimed it no longer had funds. Different from our case, the employees in *Lotts* had been involuntarily reduced from full-time to part-time employees and others hired to perform the work the plaintiffs had formerly done. Thus, the *Lotts* court did not have before it the problem addressed in *Martin* and *Briney*.Even less so is this issue before our court. Here the employees personally performed *all* the services for which they seek backpay as opposed to *Lotts* where the workers received backpay for duties they wanted to perform but which actually were handled by others who already had received compensation for doing so.

Moreover, the Supreme Court has cast further doubt on the continued viability of *Martin* and *Briney* in its decision in Gassman v. Governing Board, supra., 18 Cal.3d 137. In that case, the Supreme Court expressly disapproved both of these decisions insofar as they purported to hold teachers can be dismissed under Education Code section 13443, subdivision (d) on grounds the school district will be short of funds for the coming year. (18 Cal.3d at pp. 146-148.)

E. The Appellant Is Not Entitled to Attorney's Fees

(4)Appellant union asks for an award of attorney fees under section 1021.5 of the Code of Civil Procedure. This section authorizes a court to compel one or more opposing parties to pay attorney fees to a "successful party" when certain criteria are met. First, it must be an "action which has resulted in the enforcement of an important right affecting the public interest ...." Secondly, "a significant benefit, whether pecuniary or nonpecuniary," must have "been conferred on the general public or a large class of persons, ..." Thirdly, "the necessity and financial burden of private enforcement" must be "such as to make the award appropriate, ..." And fourth, "such fees should not in the interest of justice be paid out of the recovery, if any." (Code Civ. Proc., § 1021.5.)

Appellant union urges this case enforces an important right affecting the public interest since it resolves "a question of first impression, namely, the applicability of the constitutional debt limitation to collective bargaining negotiations in California school districts." We agree the first of the four criteria is met. Appellant union then cites *Wilkerson v. City of Placentia* (1981) 118 Cal.App.3d 435 [173 Cal.Rptr. 294] to support a conclusion the remaining criteria also are satisfied. In that case, the court awarded fees to the plaintiff, an individual probationary fireman, who succeeded in a claim ***98** for backpay. His case established a legal principle which extended legal protections to a "large class of persons," i.e., similarly situated probationary public employees. We agree with appellant the instant case confers a benefit on a large class of people-a substantial category of public employees-just as did *Wilkerson*.Thus the second of the four criteria also is satisfied.

On the other hand, when we turn to the third of the criteria *Wilkerson* is easily distinguishable. Indeed it exemplifies a situation where "the necessity and financial burden of private enforcement are such as to make the award appropriate" while the instant case is not. We might be disposed to consider awarding counsel fees were appellant an individual like Mr. Wilkerson or a legal services organization as was involved in *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668 [186 Cal.Rptr. 589, 652 P.2d 437], or a neighborhood association (*Friends of "B" St. v. City of Hayward* (1980) 106 Cal.App.3d 988 [165 Cal.Rptr. 514]), or the like. But in this case the appellant is a union. One of the functions of unions is to provide legal counsel to enforce the terms of contracts they sign on behalf of their members. This essentially is what was involved in the instant case. The subject of the litigation was enforcement of the salary clauses in the union's contract. The primary beneficiaries of the litigation-including the appeal-are the members of the appellant union.

Appellant made no showing the legal costs were ex-

traordinarily large or the union so small it lacked the funds to protect its members' interests in the courts. Furthermore, on its face it does not appear the benefits to nonlitigants are so out of proportion to the benefits received by the membership of appellant's union as to justify an attorney fee award as a means of encouraging similar lawsuits in the public interest. Nor is there evidence in the record at this time demonstrating this to be a situation where the legal costs are so high and the litigant's benefits so modest there will be no net recovery-or a very small one-unless the other party is compelled to pick up the winner's attorney fees. Accordingly, under the circumstances of this case we are not in a position to make a finding "the necessity and financial burden of private enforcement are such as to make the award appropriate." Nor can we on the present record make the required finding "such fees should not in the interest of justice be paid out of the recovery, if any." Accordingly, we must remand these issues to the trial court for a determination whether appellant union is entitled to attorney fees and if so, how much. (*Lucchesi v. City of San Jose* (1980) 104 Cal.App.3d 323 [163 Cal.Rptr. 700]; cf., *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917 [154 Cal.Rptr. 503, 593 P.2d 200].)***99**

Disposition

The judgment denying the petition for writ of mandate is reversed and the cause remanded for further proceedings consistent with this opinion.

Lillie, P. J., and Thompson, J., concurred.
A petition for a rehearing was denied March 26, 1985, and respondents' petitions for review by the Supreme Court were denied June 20, 1985. Kaus, J., was of the opinion that the petitions should be granted.

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COUNTY OF LOS ANGELES, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; TERRELL R., Real Party in Interest.

Cal.App.2.Dist.

COUNTY OF LOS ANGELES, Petitioner,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; TERRELL R., Real Party in Interest.

No. B157850.

Court of Appeal, Second District, Division 5, California.
Sept. 30, 2002.

SUMMARY

A minor sued a county and others after the child was placed in a foster family home in which he was sexually molested. The complaint alleged causes of action against the county for violation of mandatory statutory duties (Gov. Code, § 815.6) and negligence. The county moved for summary judgment on several grounds, including the defense that it was immune from suit. The trial court denied the county's motion. (Superior Court of Los Angeles County, No. BC235677, Marvin Lager, Judge.)

The Court of Appeal granted the county's petition for a writ of mandate, and ordered the trial court to vacate its denial of the county's motion for summary judgment, to enter a new order granting the motion, and to enter judgment in favor of the county. The court held that the child was unable to establish, for purposes of pleading a cause of action under Gov. Code, § 815.6, that specified statutes and a regulation created a mandatory duty on the part of the county to place foster children with relatives or siblings. Although the statutes and the regulation all provided that preferential consideration should be given to placing the child in the home of a relative when possible, such a preference was merely a legislative goal or policy; it did not create a mandatory duty. Foster care placement involves the exercise of discretion. Also, the purpose of the statutes and regulation was to preserve the family relationship, not to prevent sexual abuse. Moreover, no relatives of the child were available for placement. The court also held that the child was unable to establish that specified department of social services manual regulations created a mandatory duty on the part of the county to place foster children in an appropriate environment and monitor the children's condition. The court further held that the child was unable to establish derivative liability for acts or omissions of county employees under Gov. Code, § 815.2. The court also held that the child was unable to establish liability based on the county social worker's failure to supervise him, or based on the fact that the social worker knew the foster parent had completed only 15 hours of the 30 hours of training required by the foster family agency for certification. (Opinion by Grignon, J., with Turner, P. J., and Armstrong, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Summary Judgment § 26--Appellate Review--Standard of Review.
The appellate court reviews orders granting or denying a summary judgment motion de novo. The appellate court exercises an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law. There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.

(2) Government Tort Liability § 2--As Governed by Statute.
In California, all government tort liability must be based on statute. Gov. Code, § 815, abolished all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the federal or state Constitution. Thus, in the absence of some constitutional requirement, public entities may be liable only if a statute declares them to be liable.

(3) Government Tort Liability § 3.2--Grounds for Relief--Mandatory Duty-- Enactment--Regulation--Definitions.
The term "enactment" as used in Gov. Code, § 815.6 (imposition of liability on government agency for failure to discharge mandatory duty imposed by enactment), means a constitutional provision, statute, charter provision, ordinance or regulation (Gov. Code, § 810.6). This definition is intended to refer to all measures of a formal legislative or quasi-legislative nature. The term "regulation," as used in Gov. Code, § 810.6, means a rule, regulation, order or standard, having the force of law, adopted as a regulation by an agency of the state pursuant to the Administrative Procedure Act. That act's rulemaking provisions apply to most state agencies and their regulations. There are significant exceptions, however, both as to the agencies and types of regulations covered. The act does not apply to a regulation that relates only to the internal management of the state agency or a regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state. Thus, an employee manual of a county-operated juvenile dependency facility is not an enactment that imposes a mandatory duty on county employees.

(4) Government Tort Liability § 24--Actions--Pleading--Failure to Discharge Mandatory Duty--Specific Statutory Duty.
To state a cause of action for government tort liability for failure to discharge a mandatory duty, one of the essential elements that must be pleaded is the existence of a specific statutory duty. Duty cannot be alleged simply by stating "defendant had a duty under the law"; that is a conclusion of law, not an allegation of fact. The facts showing the existence of the claimed duty must be alleged. Since the duty of a governmental agency can only be created by a statute or enactment, the statute or enactment claimed to establish the duty must at the very least be identified. Therefore, a litigant seeking to plead the breach of a mandatory duty must specifically allege the applicable statute or regulation; otherwise a court cannot determine whether the enactment was intended to impose an obligatory duty to take official action or whether it was merely advisory in character.

(5) Government Tort Liability § 3.2--Grounds for Relief--Mandatory Duty-- Test for Determining Liability.
Gov. Code, § 815.6 (imposition of liability on government agency for failure to discharge mandatory duty imposed by enactment), contains a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not a discretionary, duty; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting § 815.6 as a basis for liability; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered. Whether an enactment is intended to impose a mandatory duty is a question of law for the court.

(6) Government Tort Liability § 3.2--Grounds for Relief--Mandatory Duty-- Obligatory Enactment.
The application of Gov. Code, § 815.6 (imposition of liability on government agency for failure to discharge mandatory duty imposed by enactment), requires that the enactment at issue be obligatory, rather than merely discretionary or permissive, in its directions to the public entity. The enactment must require, rather than merely authorize or permit, that a particular action be taken or not taken. It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. It also requires that the mandatory duty be designed to protect against the particular kind of injury the plaintiff suffered. The plaintiff must show the injury is one of the consequences that the enacting body sought to prevent through imposing the alleged mandatory duty. The inquiry in this regard goes to the legislative purpose of imposing the duty. That the enactment confers some benefit on the class to which plaintiff belongs is not enough; if the benefit is incidental to the enactment's protective purpose, the enactment cannot serve as a predicate for liability under Gov. Code, § 815.6. An enactment creates a mandatory duty if it requires a public agency to take a particular action. An enactment does not create a mandatory duty if it merely recites legislative goals and policies that must be implemented through a public agency's exercise of discretion. The use of the word "shall" in an enactment does not necessarily create a mandatory duty.

(7) Government Tort Liability § 3.2--Grounds for Relief--Mandatory Duty-- Placement of Foster Child with Relatives or Siblings.
In an action by a dependent child of the court, alleging that a county breached mandatory duties by placing him in a foster home in which he was sexually molested, the child was unable to establish, for purposes of pleading a cause of action under Gov. Code, § 815.6 (imposition of liability on government agency for failure to discharge mandatory duty

imposed by enactment), that specified statutes and a regulation created a mandatory duty on the part of the county to place foster children with relatives or siblings. Although Fam. Code, § 7950, subd. (a)(1), Welf. & Inst. Code, § 16501.1, subd. (c), Welf. & Inst. Code, § 16000, and a department of social services manual regulation all provided that preferential consideration should be given to placing the child in the home of a relative when possible, such a preference was merely a legislative goal or policy; it did not create a mandatory duty. Foster care placement is a governmental function that involves the exercise of discretion. In addition, the purpose of the statutes and regulation was to preserve the family relationship, not to prevent sexual abuse. Moreover, no relatives of the child were available for placement. Similarly, Welf. & Inst. Code, § 16002, subd. (b), provides that the responsible local agency shall make a diligent effort to develop and maintain sibling relationships, but that statute did not create a mandatory duty.

(8) Government Tort Liability § 3.2--Grounds for Relief--Mandatory Duty-- Placement of Foster Child in Appropriate Environment.
In an action by a dependent child of the court, alleging that a county breached mandatory duties by placing him in a foster home in which he was sexually molested, the child was unable to establish, for purposes of pleading a cause of action under Gov. Code, § 815.6 (imposition of liability on government agency for failure to discharge mandatory duty imposed by enactment), that specified department of social services manual regulations created a mandatory duty on the part of the county to place foster children in an appropriate environment and monitor the children's condition. The regulations set forth general policy goals, but did not specifically direct the manner in which the goals would be attained. They created no mandatory duty, and their purpose was not to prevent sexual abuse. Placement and supervision are functions involving the exercise of discretion. A county is not the insurer of a child's physical and emotional condition, growth and development while in foster care placement.

(9) Government Tort Liability § 5--Grounds for Relief--As Dependent on Liability of Employees--Derivative Liability.
Gov. Code, § 815.2, imposes upon public entities vicarious liability for the tortious acts and omissions of their employees, and makes it clear that in the absence of statute a public entity cannot be held liable for an employee's act or omission where the employee himself or herself would be immune. Identification of a specific employee tortfeasor is not essential to liability under Gov. Code, § 815.2.

(10) Government Tort Liability § 5--Grounds for Relief--As Dependent on Liability of Employees--Derivative Liability--Discretionary Activities--Placement of Minor in Foster Care.
In an action by a dependent child of the court, alleging that a county was liable for placing him in a foster home in which he was sexually molested, the child was unable to establish derivative liability for acts or omissions of county employees under Gov. Code, § 815.2. Gov. Code, § 820.2, provides that a public employee is not liable for an injury resulting from his or her act or omission where the act or omission was the result of the exercise of the discretion vested in the employee, whether or not such discretion is abused. The determination to place a child in a particular foster family home is immune from liability pursuant to Gov. Code, § 820.2. The choice of a foster family home for a dependent child is a complex task requiring the consideration and balancing of many factors to achieve statutory objectives. Selecting and certifying a foster family home for care of dependent children are an activity with many subjective determinations and is fraught with major possibilities of an erroneous decision. Foster family home placement constitutes an activity of a co-equal branch of government, and the discretionary decisions made in connection therewith should be deemed beyond the proper scope of court review. A county social worker is immune from liability for negligent supervision of a foster child unless the social worker fails to provide specific services mandated by statute or regulation.
[See 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 247 et seq.; West's Key Number Digest, Infants ⚿ 17.]
(11) Government Tort Liability § 5--Grounds for Relief--As Dependent on Liability of Employees--Discretionary Activities--Failure to Supervise Minor Placed in Foster Care Home.
In an action by a dependent child of the court, alleging that a county was liable for placing him in a foster home in which he was sexually molested, the child was unable to establish liability based on the county social worker's failure to supervise him. The evidence was undisputed that the county social worker complied with the visitation schedule mandated by the regulations. In addition, the child was placed with a licensed foster family agency; a social worker from that agency visited the child in his foster family home two or three times a month. The foster family agency social worker reported that the child had his own bedroom. The child never

disclosed to either the county or the foster family agency social workers, during these visits, the improprieties or sexual abuse that took place. The child appeared to the social workers to be content in a stable placement. The appropriate degree of supervision of a foster parent, in excess of the visitation schedule mandated by statute or regulation, is a uniquely discretionary activity for which the county social worker and the county were immune.

(12) Government Tort Liability § 5--Grounds for Relief--As Dependent on Liability of Employees--Placement of Minor with Certified Foster Parent--Relaxation of Training Requirements.
In an action by a dependent child of the court, alleging that a county was liable for placing him in a foster home in which he was sexually molested, the child was unable to establish liability, notwithstanding that the county social worker knew the foster parent had completed only 15 hours of the 30 hours of training required by the foster family agency for certification. The county social worker had a ministerial duty to place the child with a licensed foster family agency for placement in a certified foster family home. The agency was a licensed foster family agency, and it certified the residence as a foster family home. The county social worker placed the child with the foster family agency for placement in the residence. Thus, the county social worker complied with her ministerial duty. It was the duty of the foster family agency to certify the residence as a foster family home in compliance with its license with the state and its contract with the County. Although the agency relaxed the training requirement, the evidence was undisputed that the reason for the relaxation was to expedite the certification of the residence in order to facilitate the placement of the child with a family friend. There was no evidence of any improper purpose or motivation. The knowledge of the county social worker of the relaxation of the training requirements under these circumstances could not reasonably be construed as knowledge that the certification was a sham.

COUNSEL
Schuler & Kessel, Elizabeth M. Kessel and Linda Diane Anderson for Petitioner.
No appearance for Respondent.
Voorhies & Kramer, Richard C. Voorhies, R. Brian Kramer, and Linda Wallace Pate for Real Party in Interest.

GRIGNON, J.

Defendant County of Los Angeles (County) petitions for a writ of mandate ordering respondent court to grant its motion for summary judgment of the action brought against it by real party in interest Terrell R. This case arises out of Terrell's dependency placement in a foster family home in which he was sexually molested. He alleged the County breached mandatory duties causing his injuries. We conclude no triable issue of fact exists as to the breach of any mandatory duty by the County causing Terrell injury. He further alleged the County was responsible under the doctrine of respondeat superior for the negligence of its social worker. We conclude the social worker and the County are immune for the discretionary acts of the social worker in placing and supervising Terrell. Accordingly, we grant the petition and order respondent court to grant the motion for summary judgment and enter judgment in favor of the County.

Facts and Procedural Background [FN1]

Facts

Terrell was born in April 1988. Terrell and his four siblings were declared dependents of the court and removed from the custody of their mother in *634 November 1996. The children were placed with the maternal grandmother and her husband. In January 1999, the maternal grandmother was appointed guardian of the children. In early March 1999, the County Department of Children and Family Services detained the children and removed them from their maternal grandmother's custody due to her failure to provide for them and her abuse of prescription drugs. The children were permitted to remain in the home with the maternal grandmother's husband, provided the maternal grandmother did not live in the home.

FN1 This appeal is from a summary judgment. The relevant facts are largely undisputed. To the extent conflicting evidence exists, we state the facts in the light most favorable to the party opposing the summary judgment motion, i.e., Terrell.

On March 8, 1999, Robert Poole contacted the County social worker assigned to the children. Robert Poole told the County social worker he was a family friend interested in becoming a caregiver for the children and asked about the procedure. The County social worker advised Robert Poole to contact a state licensed foster family agency to inquire about becoming a certified foster parent. Robert Poole

ontacted Wings of Refuge, a state licensed foster family agency, and began attending Model Approach for Partnership in Parenting (MAPP) classes.

On March 31, 1999, the maternal grandmother returned to the home. An immediate and temporary placement for the five children was required.

By April 1, 1999, Wings of Refuge had certified Robert Poole as a foster parent. He did not have a criminal record. However, a child abuse index clearance, the results of a TB test, and verification of employment had not been completed prior to the certification of Robert Poole as a foster parent. Satisfactory responses were obtained only thereafter. Prior to certification, Robert Poole had not completed the 30 hours of MAPP classes required by Wings of Refuge's license with the state; he had completed only 15 hours. The County social worker was aware of this fact. In March 1999, no state regulation required the completion of training prior to certification of an individual as a foster parent. Subsequently, a regulation was adopted requiring 12 hours of training prior to certification. (Cal. Code Regs., tit. 22, § 89405.) However, the program statement filed by Wings of Refuge with the state indicated an individual certified by Wings of Refuge as a foster parent would have completed 30 hours of MAPP training.

At the time Robert Poole was certified as a foster parent, he was living with his mother, Monica Poole, in a three-bedroom house in Inglewood. Wings of Refuge inspected the Poole residence, completed a home study, and certified the residence as a foster family home. The Poole residence was certified by Wings of Refuge to take only one of the children until Robert Poole could obtain a larger home. Terrell was placed with Robert Poole. As of May 5, 1999, his four siblings were placed together in a different foster *635 family home; the siblings' foster parent was working towards qualifying to take Terrell as a fifth child. No relatives were currently available for placement, although a maternal aunt was interested if she could obtain a larger residence. Other relatives were also contacted.

On April 5, 1999, the dependency court ordered the children detained and removed from the custody of the maternal grandmother. On June 9, 1999, the allegations of a supplemental petition against the maternal grandmother were sustained.

The County social worker met with all five children and Robert Poole at the offices of Wings of Refuge on April 1, 1999, and at the siblings' foster family home on May 25 and June 10, 1999. This satisfied the County's mandatory duty to conduct face-to-face visits each calendar month under the state Department of Social Services Manual of Policies and Procedures (DSS Manual) regulation 31-320.41.

A Wings of Refuge social worker visited Terrell in the Poole home on April 1, April 27, May 6, May 18, June 8, June 15, and June 22, 1999. Terrell had his own bedroom.

Terrell had been sleeping in the same bed as Robert Poole since the beginning of his placement in the Poole home. Terrell was sexually abused by Robert Poole between April 1 and June 30, 1999. The Wings of Refuge social worker first received information of the bed sharing and possible sexual abuse of Terrell by Robert Poole on June 28, 1999. The Wings of Refuge social worker called the child abuse hotline on June 29, 1999. Terrell was removed from the Poole home on that same date. The County social worker did not know until July 5, 1999, that Terrell was sleeping in the same bed as Robert Poole or that Robert Poole was sexually molesting Terrell.

Criminal charges were filed against Robert Poole for the sexual molestation of Terrell. Robert Poole was acquitted.

Allegations of the Complaint

On August 23, 2000, Terrell sued Robert Poole, Monica Poole, the County, and Wings of Refuge. The complaint alleged causes of action against the County for violation of mandatory statutory duties (Gov. Code, § 815.6) and negligence, arising out of the County's placement of Terrell in the Poole home and supervision of Terrell thereafter. Specifically, the complaint listed various statutes and regulations alleged to have created mandatory duties on the part of the County, which the County had breached *636 in its placement and supervision of Terrell. Terrell's action for negligence against the County stated facts alleging both direct liability and vicarious liability for the actions of its unnamed employees under the doctrine of respondeat superior.

Terrell also sued Wings of Refuge for negligence; Robert Poole for negligence, assault and battery, and intentional infliction of emotional distress; Dependency Court Legal Services for legal malpractice; and Monica Poole for negligence.

County's Motion for Summary Judgment

The County moved for summary judgment on the grounds it was immune from suit unless it breached a mandatory statutory duty, it breached no mandatory statutory duty owed to Terrell, and any breach did not cause Terrell damage. [FN2] The County also moved for summary judgment on the ground that any negligence of its employees had been the result of the exercise of discretion and therefore the County was also immune from suit on this basis. Terrell opposed the motion. The County replied to the opposition.

FN2 Respondent court did not rule on Terrell's objections to the County's evidence. Accordingly, those objections have been waived. (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 670, fn. 1[25 Cal.Rptr.2d 137, 863 P.2d 207].) Moreover, to the extent the objections are raised on appeal, they are not supported by adequate citations to the record or statutory or case authority. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979[21 Cal.Rptr.2d 834].) In addition, to the extent the evidence consisted of an expert opinion, neither this court nor the trial court relied on the expert opinion. Finally, the County's evidence consisted primarily of admissible records from the dependency court proceedings. We note that these records were attached by Terrell to the deposition of the County social worker submitted to the trial court.

November 2, 2001 Hearing

The hearing on the summary judgment motion was scheduled for November 2, 2001. On that date, the trial court requested that the parties pinpoint the precise mandatory duties that the County had allegedly violated. The hearing was continued to March 21, 2002.

March 21, 2002 Hearing

Plaintiff identified the following statutes and regulations assertedly giving rise to a mandatory duty on the part of the County: Family Code section 7950, subdivision (a)(1); Welfare and Institutions Code sections 16501, subdivision (c), 16501.1, subdivision (c), 16000, and 16002, subdivision (b); and DSS Manual regulations 31-301.21, 31-405.1(j), 31-420.1, and 31-420.2. Respondent court concluded a triable issue of fact existed as to *637 whether the County social worker knew that 30 hours of MAPP classes were required prior to certification of a foster parent and knew Robert Poole had completed only 15 hours. From this, respondent court inferred the County social worker might have known that the certification of Robert Poole as a foster parent by Wings of Refuge was a sham. The County social worker had a ministerial duty to place Terrell in a certified foster family home and thus under the doctrine of respondeat superior, the County was liable for the breach of that ministerial duty. Respondent court denied the County's motion for summary judgment. This timely petition followed.

Discussion

Standard of Review

(1) We review orders granting or denying a summary judgment motion de novo. (*FSR Brokerage, Inc. v. Superior Court* (1995) 35 Cal.App.4th 69, 72[41 Cal.Rptr.2d 404]; *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 580-581[37 Cal.Rptr.2d 653].) We exercise "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law." (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222[38 Cal.Rptr.2d 351].) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850[107 Cal.Rptr.2d 841, 24 P.3d 493].)

Immunity of County

(2) "In California, all government tort liability must be based on statute. Government Code section 815 provides: 'Except as otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.' (Gov. Code, § 815, subd. (a).) ... [T]his section ' "abolished all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the federal or

tate Constitution. Thus, in the absence of some constitutional requirement, public entities may be liable *only* if a statute declares them to be liable." ' " (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1457[81 Cal.Rptr.2d 165].)

Mandatory Duty-Direct Liability

A public entity may be directly liable for failure to discharge a mandatory duty. (Gov. Code, § 815.6.)Government Code 815.6 provides: "Where a *638 public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."

(3) "The term 'enactment' as used in Government Code section 815.6 means 'a constitutional provision, statute, charter provision, ordinance or regulation.' (Gov. Code, § 810.6.) 'This definition is intended to refer to all measures of a formal legislative or quasi-legislative nature.' [Citation.] The term 'regulation,' as used in Government Code section 810.6 means 'a rule, regulation, order or standard, having the force of law, adopted ... as a regulation by an agency of the state pursuant to the Administrative Procedure Act [Act].' [Citation.] [¶] 'The ... Act rulemaking provisions apply to *most state agencies* and their regulations. [Citations.] There are significant exceptions, however, both as to the agencies and types of regulations covered. [Citation.]' [Citations.] For instance, the Act does not apply to '[a] regulation that relates only to the internal management of the state agency' or '[a] regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.' " (*Wilson v. County of San Diego* (2001) 91 Cal.App.4th 974, 982[111 Cal.Rptr.2d 173].) An employee manual of a county-operated juvenile dependency facility is not an enactment that imposes a mandatory duty on county employees. (*Ibid.*)

(4) "One of the essential elements that must be pled is the existence of a specific statutory duty. [Citation.] Duty cannot be alleged simply by stating "defendant had a duty under the law"; that is a conclusion of law, not an allegation of fact. The facts showing the existence of the claimed duty must be alleged. [Citation.] Since the duty of a governmental agency can only be created by statute or "enactment," the statute or "enactment" claimed to establish the duty must at the very least be identified.' [Citation.] Therefore, a ' "... litigant seeking to plead the breach of a mandatory duty must specifically allege the applicable statute or regulation." ' [Citation.] ' Unless the applicable enactment is alleged in specific terms, a court cannot determine whether the enactment relied upon was intended to impose an obligatory duty to take official action to prevent foreseeable injuries or whether it was merely advisory in character.' " (*Becerra v. County of Santa Cruz, supra,* 68 Cal.App.4th at p. 1458.)

(5) " 'Government Code [section] 815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not discretionary, duty ...; (2) the *639 enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability ...; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered.' [Citation.] Whether an enactment is intended to impose a mandatory duty is a question of law for the court." (*Becerra v. County of Santa Cruz, supra,* 68 Cal.App.4th at p. 1458.)

(6) As our Supreme Court has explained, "First and foremost, application of [Government Code] section 815.6 requires that the enactment at issue be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken. [Citation.] It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. " (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498[93 Cal.Rptr.2d 327, 993 P.2d 983].)

"Second, but equally important, [Government Code] section 815.6 requires that the mandatory duty be 'designed' to protect against the particular kind of injury the plaintiff suffered. The plaintiff must show the injury is ' "one of the consequences which the [enacting body] sought to prevent through imposing the alleged mandatory duty." ' [Citation.] Our inquiry in this regard goes to the legislative *purpose* of imposing the duty. That the enactment 'confers some benefit' on the class to which plaintiff belongs is not enough; if the benefit is 'incidental' to the enactment's protective purpose, the enactment cannot serve as a predicate for liability under [Government Code] section 815.6." (*Haggis v. City of Los Angeles, supra,* 22 Cal.4th at p. 499.)

An enactment creates a mandatory duty if it requires a public agency to take a particular action. (*Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.)An enactment does not create a mandatory duty if it merely recites legislative goals and policies that must be implemented through a public agency's exercise of discretion. (*Ibid.*) The use of the word "shall" in an enactment does not necessarily create a mandatory duty. (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 910-911, fn. 6[136 Cal.Rptr. 251, 559 P.2d 606]; *Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.)

Statutes and Regulations

(7) Terrell claims the following statutes and regulations create mandatory duties on the part of the County. *640

1. *Relative and sibling placement.*

Terrell argues Family Code section 7950, subdivision (a)(1), Welfare and Institutions Code sections 16501.1, subdivision (c), 16000, 16002, subdivision (b), and DSS Manual regulation 31-420.2 require that a foster child be placed with a relative and siblings. We address each of these enactments.

A. Family Code section 7950, subdivision (a)(1) provides: "With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a placement in foster care is being made, the following considerations shall be used: [¶] ... Placement shall, if possible, be made in the home of a relative, unless the placement would not be in the best interest of the child. Diligent efforts shall be made to locate an appropriate relative. Before any child may be placed in long-term foster care, each relative whose name has been submitted to the agency as a possible caretaker, either by himself or herself or by other persons, shall be evaluated as an appropriate placement resource."

Family Code section 7950 "concerns priorities for foster care placement." (*Becerra v. County of Santa Cruz, supra*, 68 Cal.App.4th at p. 1459.)This legislative preference for placement in the home of a relative is merely a legislative goal or policy that must be implemented by the County in the exercise of its judgment as to an appropriate foster care placement; it does not create a mandatory duty. (*Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.)Foster care placement is a governmental function that involves the exercise of discretion. In addition, the purpose of the statute is to preserve the family relationship, not to prevent sexual abuse. Moreover, the evidence is undisputed that no relatives of Terrell were available for placement.

B. Welfare and Institutions Code section 16501.1, subdivision (c) provides: "When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most family-like and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code."

"[Welfare and Institutions Code s]ection 16501.1 requires [Child Protective Services] social workers to analyze the selection criteria prior to placement of the child. The statute does not, however, specify the ultimate *641 placement that must be made, or dictate that any one factor is controlling. Although the statute provides a general policy statement by which social workers are to be guided, it does not require a particular result, or specify the 'special needs' or 'best interests' of the child. These factors, sometimes difficult and subjective, are left to the judgment of the social worker placing the child. [¶] ... [T]o the extent that there is a 'mandatory duty' imposed upon the County by Welfare and Institutions Code section 16501.1, subdivision (c), it is to evaluate the stated criteria prior to making a placement selection." (*Becerra v. County of Santa Cruz, supra*, 68 Cal.App.4th at pp. 1459-1460.)Welfare and Institutions Code section 16501.1, subdivision (c) is, like Family Code section 7950, concerned with priorities for discretionary foster care placement; it creates no mandatory duties. (*Becerra*, at p. 1459.)Similarly, it does not have a purpose to prevent sexual abuse and no relatives were available for placement.

C. Welfare and Institutions Code section 16000 provides: "It is the intent of the Legislature to preserve and strengthen a child's family ties whenever possible, removing the child from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. In any case in which a child is removed

from the physical custody of his or her parents, preferential consideration shall be given whenever possible to the placement of the child with the relative as required by Section 7950 of the Family Code. When the child is removed from his or her own family, it is the purpose of this chapter to secure as nearly as possible for the child the custody, care, and discipline equivalent to that which should have been given to the child by his or her parents. It is further the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive, most family-like setting and to live as close to the child's family as possible pursuant to subdivision (c) of Section 16501.1. Family reunification services shall be provided for expeditious reunification of the child with his or her family, as required by law. If reunification is not possible or likely, a permanent alternative shall be developed."

Welfare and Institutions Code section 16000 is another statute setting forth legislative priorities for discretionary foster care placement; it creates no mandatory duties. (*Becerra v. County of Santa Cruz, supra*, 68 Cal.App.4th at p. 1459.)Similarly, its purpose is not to prevent sexual abuse and no relatives were available for placement.

D. Welfare and Institutions Code section 16002, subdivision (b) provides: "The responsible local agency shall make a diligent effort in all out-of-home placements of dependent children, including those with relatives, to develop and maintain sibling relationships. If siblings are not placed *642 together in the same home, the social worker shall explain why the siblings are not placed together and what efforts he or she is making to place the siblings together or why those efforts are not appropriate. When placement of siblings together in the same home is not possible, diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child. If the court determines by clear and convincing evidence that sibling interaction is detrimental to a child or children, the reasons for the determination shall be noted in the court order, and interaction shall be suspended."

As with relative placement, placement with siblings is a legislative goal that does not create a mandatory duty. It is a factor to be considered in making the discretionary foster care placement. Moreover, its purpose is to preserve familial relationships and not to prevent sexual abuse. Further, the evidence is undisputed that a placement for all five siblings was not available at the time.

E. DSS Manual regulation 31-420.2 provides in relevant part: "When selecting a foster care placement for the child, the social worker shall adhere to the following priority order: [¶] .21 The home of a relative, including the non-custodial parent, in which the child can be safely placed as assessed according, but not limited to, the requirements specified in Welfare and Institutions Code [s]ection 361.3. [¶] .211 Preferential consideration for placement of the child shall be given to a non-custodial parent, then an adult who is a grandparent, aunt, uncle or sibling of the child. [¶] ... [¶] .22 A licensed foster family home, licensed small family home, or a licensed foster family agency for placement in a family home which has been certified by the foster family agency."

Once again, this regulation establishes priorities for discretionary foster care placement. It creates no mandatory duties. Its purpose is not to prevent sexual abuse.

2. *Appropriate placement and supervision.*

(8) Terrell argues that DSS Manual regulations 31-405.1(j) and 31-420.1 require the County to place a foster child in an appropriate environment and monitor the child's condition. We address these two regulations.

A. DSS Manual regulation 31-405.1(j) provides: "When arranging for a child's placement the social worker shall: [¶] ... [¶] Monitor the child's *643 physical and emotional condition, and take necessary actions to safeguard the child's growth and development while in placement." This regulation sets forth general policy goals for the social worker, but does not specifically direct the manner in which the goals will be attained. It creates no mandatory duty. (Cf. *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 142[32 Cal.Rptr.2d 643] [DSS regulation requiring monthly visits creates a mandatory duty].) Placement and supervision are functions involving the exercise of discretion. A county is not the insurer of a child's physical and emotional condition, growth and development while in foster care placement. (*Jordy v. County of Humboldt* (1992) 11 Cal.App.4th 735, 741[14 Cal.Rptr.2d 553].)

B. DSS Manual regulation 31-420.1 provides in relevant part: "The foster care placement shall be based on the following needs of the child including, but not limited to: [¶] .11 The least restrictive, most family-like environment. [¶] ... [¶] .14 Capability of the foster parent(s) to meet specific needs of the child. [¶] ... [¶] .19 The most appropriate placement selection." This regulation is also a general policy statement and creates no mandatory duty. Its purpose is not to prevent sexual abuse.

3. *Other enactments.*

Terrell has also pointed to Welfare and Institutions Code section 16501, subdivision (c) [FN3] and DSS Manual regulation 31-3012.21 [FN4] as sources of mandatory duties. However, Terrell has failed to set forth the breach of any mandatory duty created by this statute or regulation, and we are unable to discern a mandatory duty.

FN3 Welfare and Institutions Code section 16501, subdivision (c) provides: "The county shall provide child welfare services as needed pursuant to an approved service plan and in accordance with regulations promulgated, in consultation with the counties, by the department. Counties may contract for service-funded activities as defined in paragraph (1) of subdivision (a). Each county shall use available private child welfare resources prior to developing new county-operated resources when the private child welfare resources are of at least equal quality and lesser or equal cost as compared with county-operated resources. Counties shall not contract for needs assessment, client eligibility determination, or any other activity as specified by regulations of the State Department of Social Services, except as specifically authorized in Section 16100."

FN4 DSS Manual regulation 31-3012.21 provides: "Counties shall not contract for case management services and any activities which are mandated by the Division 31 regulations to be performed by the social worker."

Derivative Liability

A public entity may be derivatively liable under certain circumstances for acts or omissions of employees. (Gov. Code, § 815.2.)Government Code section 815.2 provides: "(a) A public entity is liable for injury proximately *644 caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative. [¶] (b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability."

(9) "[Government Code s]ection 815.2 thus imposes upon public entities vicarious liability for the tortious acts and omissions of their employees, and makes it clear that in the absence of statute a public entity cannot be held liable for an employee's act or omission where the employee himself or herself would be immune." (*Becerra v. County of Santa Cruz, supra,* 68 Cal.App.4th at p. 1461.)"Identification of a specific employee tortfeasor is not essential to County liability under [Government Code] section 815.2." (*Id.* at p. 1462, fn. 5.)

(10) Government Code section 820.2 provides: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." "[T]he determination to place a child in a particular foster [family] home is ... immune from liability pursuant to Government Code section 820.2." (*Becerra v. County of Santa Cruz, supra,* 68 Cal.App.4th at p. 1462.)"[T]he choice of a foster [family] home for a dependent child is a complex task requiring the consideration and balancing of many factors to achieve statutory objectives." (*Id.* at p. 1464.) " 'Selecting and certifying a foster [family] home for care of dependent children seems to us to be an activity loaded with subjective determinations and fraught with major possibilities of an erroneous decision. It appears to us that foster [family] home placement ... constitutes an activity of a co-equal branch of government, and that the discretionary decisions made in connection therewith should be deemed beyond the proper scope of court review.' " (*Ibid.*) A county social worker is immune from liability for negligent supervision of a foster child unless the social worker fails to provide specific services mandated by statute or regulation. (*Id.* at pp. 1465-1466;*Scott v. County of Los Angeles, supra,* 27 Cal.App.4th at p. 142.) [FN5]*645

FN5 *Elton v. County of Orange* (1970) 3 Cal.App.3d 1053[84 Cal.Rptr. 27], upon which Terrell relies, is not controlling authority in this case for three reasons. First, the appeal in *Elton* followed a demurrer, not a summary judgment. Second, *Elton* was decided prior to the adoption of statutes mandating the exercise of discretion by social workers. Third, the *Elton* court (*Ronald S. v. County of San Diego* (1993) 16 Cal.App.4th 887, 898[20 Cal.Rptr.2d 418]) later severely limited the holding of *Elton* and described the decision as "difficult." (*Becerra v. County of Santa Cruz, supra*, 68 Cal.App.4th at p. 1464.)

Supervision

(11) Terrell alleged the County social worker failed to adequately supervise him. He argues the County social worker saw him face-to-face only once per calendar month and never visited him in his foster family home. The evidence is undisputed that the County social worker complied with the visitation schedule mandated by the regulations. In addition, Terrell was placed with a licensed foster family agency; a social worker from that agency visited Terrell in his foster family home two or three times a month. The foster family agency social worker reported that Terrell had his own bedroom. Terrell never disclosed to either the County or the foster family agency social workers, during these visits, the improprieties or sexual abuse that took place commencing on April 1, 1999, the first day of his foster placement in the Poole residence. Terrell appeared to the social workers to be content in a stable placement. The appropriate degree of supervision of a foster parent, in excess of the visitation schedule mandated by statute or regulation, is a uniquely discretionary activity for which the County social worker and the County are immune.

Placement with Certified Foster Parent

(12) A certified foster parent is an individual certified by a state-licensed foster family agency. The social worker may place a child with a licensed foster family agency for placement in a foster family home that has been certified by the foster family agency as meetings its standards. (Welf. & Inst. Code, § 361.2, subd. (e)(6); DSS Manual reg. 31-420.22.) Wings of Refuge is licensed by the state as a foster family agency. Prior to April 1, 1999, Wings of Refuge certified Robert Poole as a foster parent. The program statement of Wings of Refuge provides: "Wings of Refuge uses the M.A.P.P. (Model Approach for Partnership in Parenting) model for training, and require[s] potential Certified Parents to complete 30 hours of pre-certification training." The program statement is prepared by the foster family agency and submitted to the DSS, Community Care Licensing Division as part of its requisite plan of operation. (Cal. Code Regs., tit. 22, § 88022.)The program statement is required by DSS Manual regulations and is considered part of the license of the foster family agency. The foster family agency is required to operate within the terms specified in the plan of operation.(*Ibid.*) The program statement is also submitted to the County and becomes a contract between the County and the foster family agency. Robert Poole had completed only 15 hours of MAPP training prior to his certification. The County social worker was aware of this fact. *646

The County social worker had a ministerial duty to place Terrell with a licensed foster family agency for placement in a certified foster family home. Wings of Refuge is a licensed foster family agency, and Wings of Refuge certified the Poole residence as a foster family home. The County social worker placed Terrell with Wings of Refuge for placement in the Poole residence. Thus, the County social worker complied with her ministerial duty. It was the duty of Wings of Refuge to certify the Poole residence as a foster family home in compliance with its license with the state and its contract with the County. It is true that the state license and the County contract of Wings of Refuge required 30 hours of MAPP training prior to certification of a foster family home by Wings of Refuge. It is also true that in the case of Robert Poole, Wings of Refuge relaxed the requirement by permitting Robert Poole to complete 15 hours of MAPP training prior to certification and the remainder after certification. The evidence is undisputed that the reason for the relaxation was to expedite the certification of the Poole residence in order to facilitate the placement of Terrell with a family friend. There is no evidence of any improper purpose or motivation. The knowledge of the County social worker of the relaxation of the MAPP training requirements under these circumstances cannot reasonably be construed as knowledge that the certification was a "sham."

Disposition

The petition for writ of mandate is granted. Respondent court is ordered to vacate its decision denying the motion of the County of Los Angeles for summary judgment; enter a new and different order granting the motion, and enter judgment in favor of the County of Los Angeles. The parties are to bear their own costs in these writ proceedings.

Turner, P. J., and Armstrong, J., concurred.
A petition for a rehearing was denied October 18, 2002, and the petition of real party in interest for review by the Supreme Court was denied December 18, 2002. Kennard, J., and Moreno, J., were of the opinion that the petition should be granted. *647

Cal.App.2.Dist.
County of Los Angeles v. Superior Court
102 Cal.App.4th 627, 125 Cal.Rptr.2d 637, 02 Cal. Daily Op. Serv. 10,076, 2002 Daily Journal D.A.R. 11,441

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Supreme Court of California
KAY DELANEY, Plaintiff and Respondent,
v.
CALVIN BAKER, SR., et al., Defendants and Appellants.
No. S067060.

Mar. 4, 1999.

SUMMARY

In an action against a nursing home and its administrators arising from the death of an elderly nursing home patient, the jury returned a verdict in favor of plaintiff, the patient's daughter, on multiple theories including statutory neglect of an elder under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.). The jury found that defendants had been "reckless" in their conduct, and awarded damages for, inter alia, the decedent's pain and suffering, as well as attorney fees, pursuant to Welf. & Inst. Code, § 15657 (award of attorney fees and pain and suffering damages where defendant is liable for physical abuse, neglect, or fiduciary abuse of elderly or dependent adult). (Superior Court of Lake County, No. 29769, Anthony P. Bellante, Judge. [FN*]) The Court of Appeal, First Dist., Div. Five, No. A073292, affirmed the trial court's judgment.

FN* Retired judge of the former Justice Court for the Northlake Judicial District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that defendants were subject to the heightened remedies of Welf. & Inst. Code, § 15657, notwithstanding Welf. & Inst. Code, § 15657.2, which provides that a cause of action for injury against a health care provider based on alleged professional negligence shall be governed by those laws that specifically apply to the professional negligence causes of action. To obtain the remedies available in Welf. & Inst. Code, § 15657, a plaintiff must demonstrate by clear and convincing evidence that the defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. Welf. & Inst. Code, § 15657.2, can therefore be read as making it clear that the acts proscribed by Welf. & Inst. Code, § 15657, do not include acts of simple professional negligence, but refer to forms of abuse or neglect performed with some state of culpability greater than mere negligence. (Opinion by Mosk, J., with George, C. J., Kennard, Baxter, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d, 1e) Healing Arts and Institutions § 13-- Nursing Homes--Actions--Elder Abuse and Dependent Adult Civil Protection Act-- Damages Recoverable--Based on Reckless Neglect by Nursing Home.
A nursing home and its administrators, who engaged in "reckless neglect" of an elderly nursing home patient, were subject to the heightened remedies of Welf. & Inst. Code, § 15657 (award of attorney fees and pain and suffering damages where defendant is liable for physical abuse, neglect, or fiduciary abuse of elderly or dependent adult), of the Elder Abuse and Dependent Adult Civil Protection Act, notwithstanding Welf. & Inst. Code, § 15657.2, which provides that a cause of action for injury against a health care provider based on alleged professional negligence shall be governed by those laws that specifically apply to the professional negligence causes of action. To obtain the remedies available in Welf. & Inst. Code, § 15657, a plaintiff must demonstrate by clear and convincing evidence that the defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. Welf. & Inst. Code, § 15657.2, can therefore be read as making it clear that the acts proscribed by Welf. & Inst. Code, § 15657, do not include acts of simple professional negligence, but refer to forms of abuse or neglect performed with some state of culpability greater than mere negligence. A narrow reading of the phrase "based on professional negligence" is consistent with one of the primary

purposes of Welf. & Inst. Code, § 15657-to protect elder adults through heightened civil remedies from being recklessly neglected by their custodians, including nursing homes.
[See 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 291 et seq.]
(2) Statutes § 42--Construction--Aids--Legislative History.
Where the language of a statute is ambiguous, courts may examine the history and background of the statutory provision in an attempt to ascertain the most reasonable interpretation of the measure.

(3) Negligence § 2--Definitions and Distinctions--Negligence and Professional Negligence.
Generally, "negligence" is the failure to exercise the care a person of ordinary prudence would exercise under the circumstances. "Professional negligence" is one type of negligence, to which general negligence principles apply. The specialized education and training of professionals do not serve to impose an increased duty of care, but rather are considered additional circumstances relevant to an overall assessment of what constitutes ordinary prudence in a particular situation. Thus, the standard for professionals is articulated in terms of exercising the knowledge, skill, and care ordinarily possessed and employed by members of the profession in good standing.

(4) Negligence § 2--Definitions and Distinctions--"Recklessness."
"Recklessness" refers to a subjective state of culpability greater than simple negligence, which has been described as a "deliberate disregard" of the "high degree of probability" that an injury will occur. Recklessness, unlike negligence, involves more than inadvertence, incompetence, unskillfulness, or a failure to take precautions, but rather rises to the level of a conscious choice of a course of action with knowledge of the serious danger to others involved in it.

(5) Statutes § 45--Construction--Presumptions--Same Meaning Given to Word Used in Different Parts of Statute.
It is generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute. But that presumption is rebuttable if there are contrary indications of legislative intent. Also, the presumption does not apply when the same or a similar phrase appears in different statutory schemes with distinct designs and objectives. Establishing terminological uniformity throughout our codified law is less important than discerning the intent of the Legislature so as to effectuate the purpose of each individual statute.

COUNSEL

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Bet Tzedek Legal Services, Eric M. Carlson; Kaye, Scholer, Fierman, Hays & Handler, Carole E. Handler and Rhonda R. Trotter for American Association of Retired Persons and National Citizens' Coalition for Nursing Home Reform, Inc., as Amici Curiae on behalf of Plaintiff and Respondent.

Gwilliam, Ivary, Chiosso, Cavalli & Brewer, Eric H.

Ivary and James A. N. Smith for Consumer Attorneys of California as Amicus Curiae on behalf of Plaintiff and Respondent.

MOSK, J.

This case is concerned with the relationship between two parts of the Elder Abuse and Dependent Adult Civil Protection Act, Welfare and Institutions Code [FN1] section 15600 et seq. (hereinafter the Elder Abuse Act).Section 15657 provides in part that "Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse ..., neglect ..., or fiduciary abuse ... [of an elderly or dependent adult], and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law: [ ] (a) The court shall award to the plaintiff reasonable attorney's fees and costs.... [ ] (b) The limitations imposed by section 377.34 of the Code of Civil Procedure [forbidding a decedent plaintiff's estate from obtaining pain and suffering damages] shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code [limiting recovery of noneconomic losses to $250,000]." Section 15657.2, on the other hand, states in full: "Notwithstanding this article, a cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, based on the health care provider's ***27** alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action."

> FN1 All statutory references are to this code unless otherwise indicated.

The question presented by this case is whether a health care provider which engages in the "reckless neglect" of an elder adult within the meaning of section 15657 will be subject to section 15657's heightened remedies, or if section 15657.2 forbids the application of section 15657 under these circumstances. The defendants, a nursing home and two of its owners, argue for the latter position, claiming that the term "based on ... professional negligence" used in section 15657.2 includes such reckless neglect. The Court of Appeal decided against defendants for reasons explained below. We conclude that the Court of Appeal was correct, but for reasons different from those articulated in its opinion.

I. *Factual and Procedural Background*

On April 15, 1993, Rose Wallien, the 88-year-old mother of plaintiff Kay Delaney, fell and fractured her right ankle. Unable to care for Ms. Wallien while her ankle healed, plaintiff looked for a skilled nursing facility that could provide the care her mother needed during that time. Plaintiff selected Meadowood Nursing Center, and Ms. Wallien entered the facility on April 20, 1993. Less than four months later, on August 9, 1993, Ms. Wallien died while still a resident at Meadowood. At the time of her death, Ms. Wallien had stage III and stage IV pressure ulcers (commonly known as bedsores) on her ankles, feet, and buttocks. A stage IV bedsore means that her tissue had been eaten away down to the bone.

There was evidence introduced that she was frequently left lying in her own urine and feces for extended periods of time. The neglect was apparently the result, in part, of rapid turnover of nursing staff, staffing shortages, and the inadequate training of employees. The evidence also showed numerous violations of medical monitoring and recordkeeping regulations that prevented necessary information from being transmitted to Wallien's personal physician on a timely basis. The neglect occurred despite plaintiff's persistent complaints to nursing staff, administration, and finally, to a nursing home ombudsman. The facility had been cited for patient neglect by the Department of Health Services (see Health & Saf. Code, § 1424) shortly before Ms. Wallien's admission. After her death, the facility was given a class "A" citation, which is only levied when inadequate care creates "substantial probability that death or serious physical harm ... would result" to nursing home residents (*id.*, subd. (c)), and the facility was fined $7,500.

Plaintiff brought this action against Meadowood and the two individuals (Calvin Baker, Sr., and Calvin Baker, Jr.) who served as administrators ***28** during portions of the time Ms. Wallien resided at the facility. The case was tried to a jury on theories of negligence, willful misconduct, neglect of an elder as defined by the Elder Abuse Act and wrongful death. On the statutory neglect of an elder theory, the jury was instructed that "[t]he essential elements of such a claim are: [ ] 1. That Mrs. Wallien was 65 years of age or older; [ ] 2. Defendant is liable for neglect as

defined, and that [ ] 3. Defendant has been guilty of recklessness, oppression, or malice in the commission of this neglect." The jury instructions defined neglect by reciting the definition of that term in the Elder Abuse Act. (See former § 15610.57.)

The jury found for plaintiff on her negligence and neglect of an elder claims. It found that defendants had not, by clear and convincing evidence, been guilty of "oppression" or "malice" but that they had been "reckless" in their conduct. The jury determined that the damage sustained by Rose Wallien for pain, suffering, inconvenience, physical impairment or disfigurement was $150,000. The jury awarded $15,000 in damages for the past cost of medical and hospital care and treatment resulting from defendants' negligence. The jury attributed 2 percent of the damage to Ms. Wallien's contributory negligence, 79 percent to defendants' negligence and 19 percent to the negligence of Dr. Dean Jennings, who was no longer a defendant. Plaintiff moved for her attorney fees and costs pursuant to section 15657. The court granted the motion and awarded plaintiff $185,723.50 in attorney fees and $32,291.24 in costs. For reasons discussed below, the Court of Appeal affirmed the trial court's judgment. We granted review because of the importance of resolving the question of the relationship between sections 15657 and 15657.2.

II. *Discussion*

(1a) Three distinct positions have been proposed regarding the relationship between sections 15657 and 15657.2. The Court of Appeal's approach, and to some extent plaintiff's, was and is to find that although there may be considerable overlap between actions "based on ... professional negligence" as set forth in section 15657.2 and the actions specified in section 15657, section 15657 is not thereby limited because section 15657.2 requires only that causes of action based on professional negligence be governed by laws that *specifically* apply to professional negligence actions, in particular the package of legislation referred to as the MICRA, [FN2] and the statutes that are limited by section 15657 do not "specifically apply" to professional ***29** negligence actions. Rather, section 15657 affects two *generally* applicable statutes. The two statutes are Code of Civil Procedure section 377.34, precluding pain and suffering damages for the estates of deceased victims, and Code of Civil Procedure 1021, providing that, absent a statute, the apportionment of attorney's fees is to be left to the agreement of the parties. Therefore, a cause of action may be both "based on ... professional negligence" within the meaning of section 15657.2 and be for "reckless neglect" within the meaning of section 15657.

> FN2 MICRA, the Medical Injury Compensation Reform Act of 1975, refers to several statutes that restrict or place conditions upon causes of action and remedies directed at "health care providers" for "professional negligence." (See Code Civ. Proc., § 364 [requiring 90-day notice prior to bringing lawsuit]; *id.*, § 667.7 [permitting periodic payment of any judgment against the provider]; *id.*, § 1295 [requiring a certain type of notice for providers' mandatory arbitration provisions]; Bus. & Prof. Code, § 6146 [providing caps on attorney contingency fees]; Civ. Code, § 3333.1 [making admissible evidence of workers' compensation or disability payments]; and *id.*,§ 3333.2 [providing a $250,000 cap on noneconomic damages].)

We conclude that this interpretation is not viable. As an initial matter, we note that it is not the only plausible reading of the language of section 15657.2 and particularly of the phrase "specifically apply." The word "specifically" is not necessarily intended to convey the opposite of "generally," but, when read in context, can be taken to mean simply that the law applying to professional negligence alone governs professional negligence causes of action, and that section 15657 is not intended to alter this law.

This reading of section 15657.2 is based in part on the recognition that the MICRA statutes specifically applicable to professional negligence actions implicitly incorporate generally applicable statutes pertaining to civil actions, including the limitations on pain and suffering damages and attorney's fees found in Code of Civil Procedure sections 377.34 and 1021. For example, Business and Professions Code section 6146, a MICRA statute, provides for limits on contingency fees for attorneys who bring actions within the scope of MICRA. As we have stated, one of the purposes of such limits is to discourage "frivolous lawsuits," which may be stimulated by "potentially huge attorney fee awards if cases are won ...." (*Roa*

v. Lodi Medical Group, Inc. (1985) 37 Cal.3d 920, 931 [211 Cal.Rptr. 77, 695 P.2d 164].) Contingency fee limits would only be successful in furthering this legislative goal, however, if the rule inherent in Code of Civil Procedure section 1021-that each party is to pay its own attorney's fees-governs. Thus, Business and Professions Code section 6146, "specifically" applicable to professional negligence actions, appears to implicitly incorporate the generally applicable Code of Civil Procedure section 1021.

(2) Given that the language of section 15657.2 is ambiguous, we "examine the history and background of the statutory provision in an attempt to ascertain the most reasonable interpretation of the measure." (*Watts* v. ***30** *Crawford* (1995) 10 Cal.4th 743, 751 [42 Cal.Rptr.2d 81, 896 P.2d 807].) (1b) The legislative history shows that the Court of Appeal's interpretation is not plausible; rather it indicates that those who enacted the statute thought that the term "professional negligence," at least within the meaning of section 15657.2, was mutually exclusive of the abuse and neglect specified in section 15657. This is seen most clearly in the Legislative Counsel's Digest to the 1991 amendments to the Elder Abuse Act (Sen. Bill No. 679 (1991-1992 Reg. Sess.)), which included section 15657 and 15657.2. The digest describes section 15657.2 as follows: "This bill would also specify that actions against health care professionals for professional negligence shall be governed by laws specifically applicable to professional negligence actions, *rather than by these provisions*." (Legis. Counsel's Dig., Sen. Bill No. 679 (1991-1992 Reg. Sess.), p. 1, italics added.) [FN3]Similarly, the bill was described in the Assembly Subcommittee on the Administration of Justice as follows: "This bill does not apply to professional negligence actions against health care providers. Such action shall be *exclusively* governed by existing statutory provisions." (Assembly Subcom. on Admin. of Justice, Analysis of Sen. Bill No. 679 (1991-1992 Reg. Sess.) as amended July 16, 1991.) Similar evidence can be found in the Senate Judiciary Committee's analysis of the bill (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 679 (1991-1992 Reg. Sess.) Apr. 30, 1991, p. 2) and throughout the legislative history of the 1991 amendments.

FN3 Defendants request judicial notice of various legislative history materials. We grant their request to notice exhibit A, which consists of legislative history materials to Senate Bill No. 679. (See Evid. Code, § 452, subd. (c); *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064 [31 Cal.Rptr.2d 358, 875 P.2d 73].) We deny their request to notice exhibits B and C. Exhibit B consists of the legislative history of Assembly Bill No. 1147 (1997-1998 Reg. Sess.), which purported to clarify the meaning of the 1991 amendments, and which was not enacted. Assembly Bill No. 1147 essentially adopted the position that health care providers are fully subject to section 15657, and adopts a narrow reading of "professional negligence." Exhibit C consists of the legislative history of Senate Bill No. 83 (1989-1990 Reg. Sess.), a proposed amendment to the Elder Abuse Act (never enacted) preceding the 1991 amendments. These exhibits are irrelevant to our inquiry. (Evid. Code, §§ 454, subd. (a), 459, subds. (a) & (b).)

This leaves a choice between defendants' position and the positions of amici curiae Consumer Attorneys of California (joined to some degree by California Advocates for Nursing Home Reform, Inc., herein collectively referred to as amici curiae). [FN4] Defendants argue the term "based on ... professional negligence" covers all conduct "directly related to the rendition of professional services" (*Central Pathology Service Medical Clinic, Inc.* v. ***31** *Superior Court* (1992) 3 Cal.4th 181, 192 [10 Cal.Rptr.2d 208, 832 P.2d 924](*Central Pathology*)-a reading they argue would broadly exempt from the heightened remedies of section 15657 health care providers who recklessly neglect elder and dependent adults. Amici curiae read the term "based on ... professional negligence" much more narrowly, and argue that "reckless neglect" under section 15657 is distinct from causes of action "based on ... professional negligence" within the meaning of section 15657.2, and so health care providers who engage in such neglect would be subject to section 15657's remedies. As explained below, we believe amici curiae's position is the one that most clearly follows the language and purpose of the statute.

FN4 Amicus curiae briefs have also been received from the American Association of Retired Persons and National Citizens' Coalition for Nursing Home Reform on behalf

of plaintiff; and from Association for California Tort Reform, California Association of Health Facilities, California Medical Association, California Dental Association, and California Healthcare Association on behalf of defendants.

The starting point of our analysis is the language of the statutes themselves. "Professional negligence" in section 15657.2 is defined elsewhere as a "negligent act or omission to act by a health care provider in the rendering of professional services." (Code Civ. Proc., § 340.5.)(3) Generally "negligence" is the failure " 'to exercise the care a person of ordinary prudence would exercise under the circumstances.' " (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997 [35 Cal.Rptr.2d 685, 884 P.2d 142], fn. omitted.) "Professional negligence" is one type of negligence, to which general negligence principles apply. "With respect to professionals, their specialized education and training do not serve to impose an increased duty of care but rather are considered additional 'circumstances' relevant to an overall assessment of what constitutes 'ordinary prudence' in a particular situation. Thus, the standard for professionals is articulated in terms of exercising 'the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing ....' " (*Id.* at pp. 997-998.)

(1c) In order to obtain the remedies available in section 15657, a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. The latter three categories involve "intentional," "willful," or "conscious" wrongdoing of a "despicable" or "injurious" nature. (Civ. Code, § 3294, subd. (c); see also *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 721 [34 Cal.Rptr.2d 898, 882 P.2d 894].) (4) "Recklessness" refers to a subjective state of culpability greater than simple negligence, which has been described as a "deliberate disregard" of the "high degree of probability" that an injury will occur (BAJI No. 12.77 [defining "recklessness" in the context of intentional infliction of emotional distress action]); see also Rest.2d Torts, § 500.) Recklessness, unlike negligence, involves more than "inadvertence, incompetence, unskillfulness, or a failure to take precautions" but rather rises to the level of a "conscious choice of a course of action ... with knowledge of *32 the serious danger to others involved in it." (Rest.2d Torts, § 500, com. (g), p. 590.) [FN5]

FN5 We note that the term "reckless" was defined for the jury in this case as follows: "Reckless means that a person is aware of and consciously disregards a substantial and unjustifiable risk that his or her act will cause injury. The risk shall be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation." Defendants do not claim this instruction was in error.

(1d) Section 15657.2 can therefore be read as making clear that the acts proscribed by section 15657 do not include acts of simple professional negligence, but refer to forms of abuse or neglect performed with some state of culpability greater than mere negligence. Thus, amici curiae argue, causes of actions within the scope of section 15657 are not "cause[s] of action ... based on ... professional negligence" within the meaning of section 15657.2. Defendants claim that such an interpretation would render section 15657.2 surplusage because section 15657 already on its face excludes actions based on professional negligence strictly construed. We disagree. The Legislature could have reasonably decided that an express statement excluding professional negligence from section 15657 was needed because the language of section 15657, and in particular the terms "neglect" and "recklessness," may have been too indefinite to make sufficiently clear that "professional negligence" was to be beyond the scope of section 15657.

Amici curiae's interpretation is supported by the legislative history of section 15657. The sponsor of the legislation, the Beverly Hills Bar Association, was quoted in a Senate committee analysis appearing shortly before the bill's enactment as "argu[ing] strenuously that the high standard imposed by the bill-clear and convincing evidence of (i) liability and (ii) recklessness, malice, oppression or fraud-adequately protects providers of care from acts of simple negligence, or even gross negligence. [Senate Bill No.] 679 only pertains to acts of egregious abuse. The sponsor argues that existing limitations on damages and fees should not apply in such extreme cases." (Sen. 3d reading analysis, Sen. Bill No. 679

(1991-1992 Reg. Sess.) as amended Sept. 10, 1991, p. 2.)

If, on the other hand, the Legislature meant in section 15657.2 to exempt health care professionals in large part from section 15657 liability, why would it use the term "professional negligence" in the former section when, as discussed above, negligence is commonly regarded as distinct from the reckless, malicious, oppressive or fraudulent conduct with which section 15657 is concerned? We do not believe the Legislature "would ... have chosen such an obscure mechanism to achieve its purpose." (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 992 [73 Cal.Rptr.2d 682, 953 P.2d 858].)***33**

Amici curiae's position is also supported by a consideration of the differing purposes of MICRA and the Elder Abuse Act. The purpose of the latter is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect. As the Court of Appeal, in *ARA Living Centers-Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1559 [23 Cal.Rptr.2d 224](*ARA Living Centers*), has stated regarding the genesis and development of the Elder Abuse Act: "In 1982, the Legislature recognized 'that dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect such persons.' (Former § 15600, added by Stats. 1982, ch. 1184, § 3, p. 4223.)" It adopted measures designed to encourage the reporting of such abuse and neglect. (§ 15601 et seq.) Subsequent amendment refined the 1982 enactment, but the focus remained on reporting abuse and using law enforcement to combat it (see *ARA Living Centers*, *supra*, 18 Cal.App.4th at p. 1560). Also, Penal Code section 368 was enacted, making it a felony or misdemeanor (depending on the circumstances), for, among other things, a custodian of an elder or dependent adult to willfully cause or permit various types of injury. (Stats. 1986, ch. 769, § 1.2, p. 2531.)

In the 1991 amendments at issue here, the focus shifted to private, civil enforcement of laws against elder abuse and neglect. "[T]he Legislature declared that 'infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.' (§ 15600, subd. (h), added by Stats. 1991, ch. 774, § 2.) It stated the legislative intent to 'enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.' (*Id.*, subd. (j))" (*ARA Living Centers*, *supra*, 18 Cal.App.4th at p. 1560.)As was stated in the Senate Rules Committee's analysis of Senate Bill No. 679, "in practice, the death of the victim and the difficulty in finding an attorney to handle an abuse case where attorneys fees may not be awarded, impedes many victims from suing successfully. [ ] This bill would address the problem by: ... authorizing the court to award attorney's fees in specified cases; [and by] allowing pain and suffering damages to be awarded when a verdict of intentional and reckless abuse was handed down after the abused elder dies." (Sen. Rules Com., Analysis of Sen. Bill No. 679 (1991-1992 Reg. Sess.) as amended May 8, 1991, p. 3.)

MICRA has a different focus. The impetus for MICRA was the rapidly rising costs of medical malpractice insurance in the 1970's. "The inability of doctors to obtain such insurance and reasonable rates is endangering the health of the people of this State, and threatens the closing of many ***34** hospitals." (Governor's Proclamation to Leg. (May 16, 1975) Stats. 1975 (Second Ex. Sess. 1975-1976) p. 3947, and quoted in *American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 363, fn. 1 [204 Cal.Rptr. 671, 683 P.2d 670, 41 A.L.R.4th 233].) The response was to pass the various statutes that comprise MICRA to limit damages for lawsuits against a health care provider based on professional negligence. (Civ. Code, §§ 3333.1, 3333.2; Code Civ. Proc., § 667; Bus. & Prof. Code, § 6146.)

This difference in focus can be clarified by considering the differing types of conduct with which section 15657 and MICRA are concerned. As discussed, section 15657 concerns "neglect" "physical abuse" and "fiduciary abuse." Former section 15610.57 defines neglect as "the negligent failure of any person having *the care or custody of an elder or a dependent adult* to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following: [ ] (a) Failure to assist in personal hygiene, or in the provision of food, clothing or shelter. [ ] (b) Failure to provide medical care for physical and mental health needs.... [ ] (c) Failure to protect from health

and safety hazards. [ ] (d) Failure to prevent malnutrition." (Italics added.) Thus, neglect within the meaning of former section 15610.57 appears to cover an area of misconduct distinct from "professional negligence" in section 15657.2: "neglect" as defined in former section 15610.57 and used in section 15657 does not refer to the performance of medical services in a manner inferior to " 'the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing' " (*Flowers v. Torrance Memorial Hospital Medical Center*, *supra*, 8 Cal.4th at p. 998), but rather to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations. It is instructive that the statutory definition quoted above gives as an example of "neglect" not negligence in the undertaking of medical services but the more fundamental "[f]ailure to *provide* medical care for physical and mental health needs." (Former § 15610.57, subd. (b).) "Physical abuse" and "fiduciary abuse" in section 15657, as defined (see §§ 15610.63, 15610.30), are forms of intentional wrongdoing that also differ from "professional negligence."

The difficulty in distinguishing between "neglect" and "professional negligence" lies in the fact that some health care institutions, such as nursing homes, perform custodial functions *and* provide professional medical care. When, for example, a nursing home allows a patient to suffer malnutrition, defendants appear to argue that this was "professional negligence," the inability of nursing staff to prescribe or execute a plan of furnishing sufficient nutrition to someone too infirm to attend to that need herself. But such ***35** omission is also unquestionably "neglect," as that term is defined in former section 15610.57.

Section 15657 provides the way out of this ambiguity: if the neglect is "reckless[]," or done with "oppression, fraud or malice," then the action falls within the scope of section 15657 and as such cannot be considered simply "based on ... professional negligence" within the meaning of section 15657.2. The use of such language in section 15657, and the explicit exclusion of "professional negligence" in section 15657.2, make clear the Elder Abuse Act's goal was to provide heightened remedies for, as stated in the legislative history, "acts of egregious abuse" against elder and dependent adults (Sen. 3d reading analysis, Sen. Bill No. 679 (1991-1992 Reg. Sess.) as amended Sept. 10, 1991, p. 2), while allowing acts of negligence in the rendition of medical services to elder and dependent adults to be governed by laws specifically applicable to such negligence. That only these egregious acts were intended to be sanctioned under section 15657 is further underscored by the fact that the statute requires liability to be proved by a heightened "clear and convincing evidence" standard.

Defendants contend, as noted, that the term "based on ... professional negligence," used in section 15657.2, applies to any actions directly related to the professional services provided by a health care provider. The adoption of such a position would produce an anomalous result. It would make the determination as to whether the "recklessly neglectful" custodians of an elderly person were subject to section 15657 turn on the custodian's licensing status: A custodian who allowed an elder or dependent adult in his or her care to be become malnourished would be subject to 15657's heightened remedies only if he or she was *not* a licensed health care professional.

There is no indication that the Legislature intended this anomaly. First, as noted, "neglect" under the Elder Abuse Act refers to the acts or omissions of "any person having the care or custody of an elder or a dependent adult." (Former § 15610.57.) "Abuse of an elder or a dependent adult" is defined in section 15610.07 as "physical abuse, neglect, fiduciary abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a *care custodian* of goods or services necessary to avoid physical harm or mental suffering." (Italics added.) The Elder Abuse Act in turn defines "care custodians" at section 15610.17, subdivision (a) to include "Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code," which includes nursing homes, as well as a number of other professionally operated facilities.

Second, the legislative history demonstrates that one of the main purposes of section 15657 was the elimination of the institutional abuse of the elderly ***36** in health care facilities. Included in the packet of legislative materials for Senate Bill No. 679 was the executive summary to the then-recently issued April 1991 report of the Little Hoover Commission entitled

"Skilled Nursing Homes: Care Without Dignity." (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 679 (1991-1992 Reg. Sess.) as amended June 13, 1991, p. 2.) As one legislative committee analysis stated: "The author [presumably Senator Mello] argues that all reasonable steps to combat elder abuse must be taken. [ ] ... [T]he author refers the subcommittee to the April [1991] report ... 'Skilled Nursing Homes: Care Without Dignity.' This report chronicles the 'pain and suffering' endured by 'too many' of California's 120,000 residents of such facilities." (Assem. Subcom. on Admin. of Justice, Analysis of Sen. Bill No. 679 (1991-1992 Reg. Sess.) as amended July, 12, 1991, p. 3.)

The legislative history also discloses the assumption of opponents of Senate Bill No. 679 that the heightened remedies of section 15657 were to apply to health care providers. Notwithstanding the fact that section 15657.2 (originally designated 15662) was included in Senate Bill No. 679 from the very beginning (see Sen. Bill No. 679, 1st reading Mar. 5, 1991 (1991-1992 Reg. Sess.)), the California Association of Health Facilities, as the representative of the nursing home industry, opposed the bill. Its statement of opposition was incorporated in legislative committee analyses. "In opposition to this bill, the California Association of Health Facilities argues that [it] poses a real threat to healthcare institutions and healthcare professionals alike. They believe that the effect of this bill will be to focus additional claims on healthcare providers, and to increase their exposure in litigation. 'The net result will simply be higher insurance premiums for health care providers of all types.' " (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 679 (1991-1992 Reg. Sess.) p. 4.) The association withdrew its opposition only after a number of amendments it proposed designed to limit exposure of health facilities to damages, such as the imposition of a damage cap on pain and suffering damages (§ 15657, subd. (b)) and the placement of limitations on employer liability (§ 15657, subd. (c)), were included in the final legislation. [FN6] (See Assem. Com. on Judiciary, Republican Analysis of Sen. Bill No. 79 (1991-1992 Reg. Sess.) as amended July 12, 1991, p. 1.)

> FN6 Also, earlier versions of Senate Bill No. 679 contained a more expansive definition of elder abuse under section 15657 (at that time designated as 15660). As originally introduced, elder abuse encompassed all conduct within the scope of former section 15610, which included "physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, isolation, or other treatment resulting in physical harm or pain or mental suffering, or the deprivation by a care custodians of goods and services which are necessary to avoid physical harm or mental suffering." (See former § 15610, added by Stats. 1982, ch. 1184, § 3, p. 4223.)

From this legislative history, it appears clear that both the Legislature that enacted Senate Bill No. 679 and the opponents of Senate Bill No. 679 ***37** understood that one of the major objectives of this legislation was the protection of residents of nursing homes and other health care facilities. It is contrary to this objective to then read the phrase "based on ... professional negligence" found in section 15657.2 to mean that nursing homes or other health facilities are largely exempt from liability under section 15657 for the heightened remedies to which custodians who are not health care professionals are subject.

Defendants' principal argument in favor of their position is their claim that our holding in *Central Pathology*, *supra*, 3 Cal.4th 181, supports it. They contend that the term "based on ... professional negligence" means the same as "arising out of professional negligence," as the term was interpreted in *Central Pathology*, and that that court interpreted the latter phrase to mean any act "directly related to defendants' performance of professional services." (*Id.* at p. 193.)But, as explained below, defendants have given *Central Pathology* a broader reading than was intended.

In *Central Pathology*, the court considered Code of Civil Procedure section 425.13, a statute passed in 1987 and amended to its present form in 1988. Code of Civil Procedure section 425.13 is distinct from the MICRA legislation passed over a decade earlier. Code of Civil Procedure section 425.13, subdivision (a) (hereafter section 425.13(a)) provides in pertinent part: "In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a

claim for punitive damages to be filed. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294 of the Civil Code." The *Central Pathology* court considered whether section 425.13 (a) applied in a case against health care providers that alleged both medical negligence and intentional torts (intentional infliction of emotional distress and fraud) in connection with a failure to timely alert plaintiff to the onset of her cancer.

The court began with an inquiry into the language of the statute. It first noted that "professional negligence" was defined by MICRA, as discussed above, as " 'a negligent act or omission to act by a health care provider in the rendering of professional services.' " (*Central Pathology*, *supra*, 3 Cal.4th at p. 187.)The court then turned to the meaning of the phrase "arising out of." The court found the phrase "arising out of" had been equated with "origination, growth or flow from the event" but stated that it ***38** was "unclear whether the intentional tort causes of action in this case may be said to originate, grow, or flow from 'professional negligence.' " (*Id.* at p. 188.)Because the question before the court was not resolved by examination of the language of the statute, it then turned to its legislative history.(*Central Pathology*, *supra*, 3 Cal.4th at pp. 188-192.)

The legislative history revealed that section 425.13, as originally passed in 1987, had simply applied to *all* claims against health care providers.(*Central Pathology*, *supra*, 3 Cal.4th at pp. 188-189.)When that section was amended in 1988, the court observed, the comment of the Assembly Subcommittee on the Administration of Justice stated: " 'This bill is intended to correct an oversight. As written, Section 4215.13 [*sic*] could apply to any lawsuit against any health care provider .... *Arguably, this could include lawsuits unrelated to the practitioner's practice, such as defamation, fraud, and intentional torts.* [ ] The author [of the original version of section 425.13] asserts that the intention ... was to provide protection to health practitioners in their capacity as practitioners. Specifically, relief was sought from unsubstantiated claims of punitive damages in actions alleging professional negligence. There was no intent to protect practitioners in any other capacity. [The amendment] limits the application of Section [425.13(a)] to lawsuits involving allegations of a health practitioner's " professional negligence." ' " (*Central Pathology*, *supra*, 3 Cal.4th at p. 189, some italics omitted.)

The *Central Pathology* court then concluded "The Assembly subcommittee's comment emphasizes that lawsuits *unrelated* to a practitioner's conduct in providing health care related services were intended to be excluded from the ambit of section 425.13. Plaintiffs contend that the inclusion of the term 'intentional torts' in the list of lawsuits assumed to be unrelated to the practitioner's practice demonstrates that the Legislature intended to exclude all intentional torts from the requirements of section 425.13. From our review of the history of the statute, however, we conclude that the reference to 'intentional torts' by the author of the comments does not belie its statement of the essential purpose of the amendment-to restrict the application of section 425.13 to lawsuits brought against health practitioners 'in their capacity as practitioners.' " (3 Cal.4th at p. 190.)

The *Central Pathology* court's reasoning was based on an examination not only of the particular legislative history of section 425.13 (a), but also of the statute's purposes. As the court stated, "Under [a contrary] reading of section 425.13(a), injured patients seeking punitive damages in an action involving professional negligence could readily assert that their health care providers committed an intentional tort and that the patients seek punitive damages only in connection with the intentional tort. By including a cause of ***39** action for an intentional tort in a negligence action, plaintiffs would sidestep section 425.13(a) and the resulting procedural requirements the Legislature sought to impose on them. Thus, [such an interpretation] of section 425.13(a) effectively permits artful pleading to annul the protection afforded by that section." (3 Cal.4th at p. 191.)

Moreover, the court reasoned that a contrary reading would lead to an absurd result. "If we were to accept the [contrary] interpretation of 425.13(a), the section's protections would apply only to 'nonintentional tort' conduct that gives rise to punitive damages. There are, however, few situations in which claims for punitive damages are predicated on mere negligence or a conscious disregard of the rights or safety of others and in which no intentional torts are al-

leged. [Citation.] An interpretation of the statute that would restrict its applicability to such a limited category of cases is inconsistent with the intention of the Legislature to protect health care providers from frequently pleaded and frivolous punitive damage claims. ... [S]uch an interpretation would render the statute virtually meaningless." (*Central Pathology, supra*, 3 Cal.4th at p. 191.)

Therefore, in considering the scope of section 425.13(a), the court summarized: "We recognize that in the medical malpractice context, there may be considerable overlap of intentional and negligent causes of action. Because acts supporting a negligence cause of action might also support a cause of action for an intentional tort, we have not limited application of MICRA provisions to causes of action that are based solely on a 'negligent act or omission' as provided in these statutes. To ensure that the legislative intent underlying MICRA is implemented, we have recognized that the scope of conduct afforded protection under MICRA provisions (actions 'based on professional negligence') must be *determined after consideration of the purpose underlying each of the individual statutes*." (*Central Pathology*, *supra*, 3 Cal.4th at p. 192, italics added.) The court concluded, for reasons discussed above, that given the purpose underlying section 425.13 (a), the phrase "arising out of professional negligence" should be interpreted to pertain to causes of action "directly related to the manner in which professional services were provided" regardless of whether these claims could be characterized as negligent or intentional torts. (3 Cal.4th at p. 192.)

The *Central Pathology* court made clear that it was not deciding the meaning of the term "professional negligence" used in MICRA or in statutes other than section 425.13(a). As the court stated: "Whether professional negligence, as defined in MICRA statutes, *includes* intentional torts *is not the question.* Rather, the trial court must determine whether a plaintiff's action for damages is one '*arising out of* professional negligence of a health care ***40** provider.' (§ 425.13(a), italics added.) Based on the language of [section 425.13(a)]*and its legislative history*, we conclude that an action for damages arises out of the professional negligence of a health care provider if the injury for which damages are sought is directly related to professional services provided by a health care provider." (*Central Pathology*, *supra*, 3 Cal.4th at p. 191, some italics added.)

Thus, the *Central Pathology* court did not purport to universally define the phrase "arising out of professional negligence" much less the phrase "based on professional negligence." It rejected the contention that the language of the phrase itself yielded a single, definitive, meaning. [FN7] Rather, the court recognized that the scope and meaning of these phrases could vary depending upon "the purpose underlying each of the individual statutes." To claim that the *Central Pathology* definition extended beyond section 425.13(a) is to ignore the limitations that this court put on its own opinion. Moreover, after its statement that "the scope of conduct afforded protection under MICRA (actions 'based on professional negligence') must be determined after consideration of the purpose underlying each of the individual statutes" (*Central Pathology*, *supra*, 3 Cal.4th at p. 192), the *Central Pathology* court cited with approval *Waters v. Bourhis* (1985) 40 Cal.3d 424, 435-436 [220 Cal.Rptr. 666, 709 P.2d 469], which suggested a different interpretation of the phrase "based on professional negligence" within the context of Business and Professions Code section 6146.

> FN7 Defendants point to a footnote in *Central Pathology* in support of their broad reading of that case, which states: "We agree with amici curiae California Medical Association et al. that committee reports before the Legislature at the time it was considering amending section 425.13 indicate the Legislature did not intend to distinguish the terms 'based upon' and 'arising out of.' The reports state, 'There is substantial precedent for [the amendment]. The provisions of [MICRA] all pertain to claims of "professional negligence." ' [Citations.]" (*Central Pathology*, *supra*, 3 Cal.4th at pp. 187-188, fn. 3.) But this meant only that there is no independent significance to the fact that the drafters of section 425.13 used the term "arising out of" instead of "based on" professional negligence, not that either phrase has one invariable meaning.

In the present case we find that the Elder Abuse Act presents a very different statutory scheme from section 425.13(a) discussed in *Central Pathology*.Interpreting the phrase "based on professional

negligence" narrowly would not render section 15657 meaningless, as was the case with section 425.13(a). Rather, such an interpretation would enhance the former statute's remedial purpose, protecting elder and dependent adults who are residents of nursing homes and other health care facilities from reckless neglect and various forms of abuse. Indeed, as discussed, this interpretation would avoid the anomaly of having health care professionals exempted from section 15657's heightened remedies for the very same misconduct for which nonprofessionals would be liable. ***41**

Moreover, there is no comparable legislative history in the Elder Abuse Act that would suggest an expansive reading of the phrase "based on professional negligence." There is no suggestion in that history that the Legislature meant by "based on professional negligence" to refer to any action "against health practitioners 'in their capacity as practitioners.' " On the contrary, as discussed, the legislative history suggests that nursing homes and other health care providers were among the primary targets of the Elder Abuse Act.

The other reason supporting *Central Pathology*'s holding -preventing the frustration of the statute's purpose through artful pleading-is also not applicable to section 15657. Regardless of what plaintiffs plead, they would not be entitled to the heightened remedies of section 15657 unless they proved statutory abuse or neglect committed with recklessness, oppression, fraud or malice. Of course, the existence of such a remedy may increase the settlement value of the claim, but only to the extent that the facts indicate that defendant had committed reckless neglect, etc. Such increase in settlement value bolsters, rather than frustrates, the purpose of section 15657.

In the present case, there is substantial evidence that Rose Wallien was subject to neglect in that defendants failed, over an extended period of time, to attend to her advanced bedsores, and otherwise neglected her in such a way as to contribute to her pain and suffering and eventual death. There is also substantial evidence to support the jury's finding that the conduct was reckless, given defendants' knowledge of Wallien's deteriorating condition and plaintiff's repeated effort to intervene in her mother's behalf. Defendants do not challenge the sufficiency of the evidence as to either the "neglect" or "recklessness" findings. Substantial evidence therefore supports the awarding of attorney's fees and pain and suffering damages to her estate, as section 15657 permits, for defendants' reckless neglect.

We emphasize that our interpretation of the phrase "based on professional negligence" found in the unique statutory scheme of the Elder Abuse Act is not necessarily applicable to other statutes in which that phrase appears. Consistent with the *Central Pathology* court, we stress that the meaning of the phrase would depend upon the legislative history and underlying purpose of each of the statutes. (*Central Pathology*, *supra*, 3 Cal.4th at p. 192.)Specifically, we do not purport to construe the meaning of the same phrase within the context of the MICRA statutes. (5) It is, of course, "generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute." (*People v. Dillon* (1983) 34 Cal.3d 441, 468 [194 Cal.Rptr. 390, 668 P.2d 697].) But that presumption is rebuttable if there are ***42** contrary indications of legislative intent. And the presumption does not apply when the same or a similar phrase appears in different statutory schemes with distinct designs and objectives. [FN8] Establishing terminological uniformity throughout our codified law is less important than discerning " 'the intent of the Legislature so as to effectuate the purpose' " of each individual statute. (*Phelps v. Stostad* (1997) 16 Cal.4th 23, 32 [65 Cal.Rptr.2d 360, 939 P.2d 760].) (1e) A narrow reading of the phrase "based on professional negligence" in this context is consistent with one of the primary purposes of section 15657-to protect elder adults through the application of heightened civil remedies from being recklessly neglected at the hands of their custodians, which includes the nursing homes or other health care facilities in which they reside.

FN8 It is true that when a statutory term has received a definitive judicial construction, the Legislature is presumed to have intended that construction whenever it employs that term. (See *Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 608-609 [257 Cal.Rptr. 320, 770 P.2d 732].) But as discussed, *Central Pathology* did not purport to universally define the meaning of the term "based on professional negligence." Moreover, it is worth noting that *Central Pathol-*

> *ogy*, filed in 1992, *postdates* the 1991 amendments to the Elder Abuse Act found in Senate Bill No. 679. (1991-1992 Reg. Sess.) At the time Senate Bill No. 679 was enacted, the terms "arising out of professional negligence" and "based on professional negligence" had been quite narrowly construed. (See *Bommareddy v. Superior Court* (1990) 222 Cal.App.3d 1017, 1024 [272 Cal.Rptr. 246] [interpreting section 425.13(a) as excluding intentional torts]; *Flores v. Natividad Medical Center* (1987) 192 Cal.App.3d 1106, 1114-1116 [238 Cal.Rptr. 24] [interpreting the term "based on professional negligence" in MICRA to exclude "failure to summon" medical care pursuant to Government Code section 845.6].)

III. *Disposition*

For all of the foregoing, the judgment of the Court of appeal is affirmed.

George, C. J., Kennard, J., Baxter, J., Werdegar, J., and Chin, J., concurred.**BROWN, J.,**
Concurring.-Although I agree with the result reached by the majority, I find the Court of Appeal's straightforward interpretation of Welfare and Institutions Code section 15657.2 [FN1] more consistent with the statutory language while at the same time fully effectuating the Legislature's intent to provide additional remedies against abuse of elderly and dependent adults under the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) (§ 15600 et seq.).

> FN1 Unspecified statutory references are to the Welfare and Institutions Code.

In this case, we must determine the interplay of sections 15657 and 15657.2 of the act. Section 15657 authorizes the recovery of the decedent's pain and suffering damages in a wrongful death action as well as the award ***43** of attorney fees. Section 15657.2 states, "Notwithstanding this article [i.e., sections 15657 through 15657.3], any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action."

The Court of Appeal concluded [FN2] "that while it could have been said more simply, section 15657.2 ensures application of [the California Medical Injury Compensation Reform Act of 1975 (MICRA)], but does not displace the enhanced remedies of EADACPA, when an action for elder abuse is 'based on the health care provider's alleged professional negligence.' " In reaching this conclusion, the court recognized that the language of section 15657.2 "indicates a legislative focus on statutes of specific application to this category of claims, such as those that comprise MICRA. For example, Civil Code section 3333.1, [abrogating the collateral source rule and] enacted as part of MICRA (see *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 999 [35 Cal.Rptr.2d 685, 884 P.2d 142](*Flowers*)), applies to 'an action for personal injury against a health care provider based upon professional negligence ....' (Civ. Code, § 3333.1, subd. (a).) Similarly, Civil Code section 3333.2, [limiting recovery of noneconomic damages and] also enacted as part of MICRA (see *Flowers*, *supra*, 8 Cal.4th at p. 999), applies to 'any action for injury against a health care provider based on professional negligence ....' (Civ. Code, § 3333.2, subd. (a).) Statutes like these, which specifically limit their application to actions against a health care provider based on professional negligence, are those statutes that section 15657.2 states 'shall ... govern[].'

> FN2 Brackets together, in this manner [], without enclosing material, are used herein to indicate deletions when quoting from the opinion of the Court of Appeal; brackets enclosing material (other than publisher's added parallel citations) are, unless otherwise indicated, used to denote insertions or additions by this author.

"The question, however, is whether section 15657.2 states that MICRA statutes shall *solely* govern or shall *also* govern. [Defendants] answer that the Legislature intended that MICRA alone should apply when the cause of action is based on the health care provider's alleged professional negligence. [Defendants'] argument implicitly assumes that the application of MICRA or EADACPA is an either-or proposition, but that both cannot apply in the same case. [The Court of Appeal] disagree[d] with this assump-

tion. Section 15657 solely displaces statutes of *general* applicability, such as Code of Civil Procedure section 377.34, which limits the damages recoverable for a decedent's injuries or death, and Code of Civil Procedure section 1021, which limits the recovery of attorney fees. EADACPA's enhanced-remedy provisions do not conflict with any specific provision of MICRA." ***44**

The Court of Appeal also found no conflict between the provision for attorney fees in section 15657 and the provision in MICRA regulating the contingency fee that an attorney may contract for or collect in connection with an action "against a health care provider based upon such person's alleged professional negligence ...." (Bus. & Prof. Code, § 6146.)"This provision of MICRA, however, pertains to contingency fees only; it solely places 'limits on the percentage of a plaintiff's recovery that an attorney may retain when he represents the plaintiff on a contingency basis.' (*Roa v. Lodi Medical Group, Inc.* (1985) 37 Cal.3d 920, 927, fn. 5 [211 Cal.Rptr. 77, 695 P.2d 164].) The award permitted by section 15657 does not provide for a contingency fee; it is not calculated solely as a percentage of the recovery and more importantly it does not come out of or reduce the plaintiff's award. An award of attorney fees under section 15657 is an additional liability imposed on the defendant. (See Code Civ. Proc., § 1033.5, subd. (a)(10)(B) [attorney fees authorized by statute are a form of recoverable costs].) [There is] no conflict between the provisions of MICRA and the enhanced remedy provisions of EADACPA. Thus, nothing precludes the joint application of [both]."

The majority "conclude[s] that this interpretation is not viable" because "[t]he word 'specifically' is not necessarily intended to convey the opposite of 'generally,' but, when read in context, can be taken to mean simply that the law applying to professional negligence alone governs professional negligence causes of action, and that section 15657 is not intended to alter this law." (Maj. opn., *ante*, at p. 29.)

At best, this reasoning is definitionally strained. (See Webster's New World Dict. (3d college ed. 1989) p. 1287 [as relevant here, "specific"-and by extension "specifically"-defined as "1 limiting or limited; specifying or specified; precise; definite; explicit [no *specific* plans] 2 of or constituting a species 3 peculiar to or characteristic of something [specific traits] 4 of a special, or particular, sort or kind"].) The majority's convoluted explanation that MICRA "implicitly incorporate[s] generally applicable statutes pertaining to civil actions" (maj. opn., *ante*, at p. 29) also provides no more analytical insight than the truism that the law is a "seamless web" (see *People v. Perez* (1979) 24 Cal.3d 133, 150 [155 Cal.Rptr. 176, 594 P.2d 1, 3 A.L.R.4th 339] (dis. opn. of Mosk, J.)) or that "[i]t is assumed that the Legislature has in mind existing laws when it passes a statute." (*Estate of McDill* (1975) 14 Cal.3d 831, 837 [122 Cal.Rptr. 754, 537 P.2d 874].)

More importantly, as the Court of Appeal explained, "accepting [such an] interpretation of section 15657.2 would require [] ignor[ing] the Legislature's focus on MICRA. If the Legislature's intent was simply to displace ***45** application of section 15657, reference to MICRA was unnecessary, particularly since the two statutes are not inconsistent." The court also noted "that the 'notwithstanding' language may additionally suggest that sections 15657 through 15657.3, which constitute 'this article,' will be subservient to 'those laws which specifically apply to those professional negligence causes of action.' In other words, to the extent 'those statutes specifically applicable to those professional negligence causes of action' conflict with the provisions of sections 15657 through 15657.3, the terms of the former statutes will control rather than the terms of the latter. []"

The Court of Appeal's interpretation also obviates the need to parse the distinction between "neglect" and "professional negligence." The majority aptly concedes this poses some "difficulty" at least in the case of certain health care institutions such as nursing homes (maj. opn., *ante*, at p. 34), since section 15610.57 refers to the "negligent failure" to render adequate care to an elderly or dependent adult and virtually every category of "neglect" set forth in the statute involves some form of professional negligence if committed by a health care provider. (E.g., § 15610.57, subd. (b)(1) ["[f]ailure to assist in personal hygiene, or in the provision of food, clothing, or shelter"], (2) ["[f]ailure to provide medical care"], (3) ["[f]ailure to protect from health and safety hazards"], & (4) ["[f]ailure to prevent malnutrition or dehydration"].) Imposing a "recklessness" requirement does not transform the essential character of the underlying conduct from negligence.

The majority suggests the Court of Appeal's construction of section 15657.2 conflicts with the legislative history of EADACPA. (Maj. opn., *ante*, at pp. 29-30.) The Court of Appeal acknowledged "that the Legislative Counsel's Digest described 'this bill' [amending the statutory scheme to include the sections at issue here] as 'specify[ing] that actions against health care professionals for professional negligence shall be governed by laws specifically applicable to professional negligence actions, *rather than by these provisions*.' (Legis. Counsel's Dig., Sen. Bill No. 679 (Mar. 5, 1991) p. 2, italics added.) Albeit imprecise, this statement is not inconsistent with [the Court of Appeal's] interpretation []. The statement refers to 'professional negligence actions.' It cannot be disputed that pure negligence causes of action are not subject to section 15657. (See § 15657.) The enhanced remedies of that section arise only where the defendant has acted with recklessness, oppression, fraud or malice in the commission of the neglect. (§ 15657.)

"Moreover, this confusing description of the 1991 amendments in the Legislative Counsel's Digest is scant evidence of a legislative intent that section 15657.2 have the affect that [defendants] attribute to it. (Cf. *Isbister***46** v. *Boys' Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, 87 [219 Cal.Rptr. 150, 707 P.2d 212] [finding confusing comment by Legislative Counsel was scant evidence of legislative intent].) ' "Although a legislative counsel's digest may be helpful in interpreting an ambiguous statute, it is not the law." ...' (*In re Barry W.* (1993) 21 Cal.App.4th 358, 367 [26 Cal.Rptr.2d 161], citation omitted.) We will not disregard the problems that we find in interpreting the statute in the fashion advocated by [defendants] simply as a result of this (or similar) inconclusive and ambiguous comments in the legislative history. [Fn. omitted.] (See *J.A. Jones Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1578 [33 Cal.Rptr.2d 206] ['wisest course is to rely on legislative history only when that history itself is unambiguous'].)"

Although the court was responding to defendants' arguments regarding the significance of this legislative statement, its observations are equally apposite to the majority's criticism.

The Court of Appeal's interpretation has the further virtue of avoiding another foray into the *Central Pathology* thicket. (*Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181 [10 Cal.Rptr.2d 208, 832 P.2d 924].) The result in that case was undoubtedly correct with respect to Code of Civil Procedure section 425.13. As we are now seeing, however, the analysis is far from a suitable template for construing different statutory language enacted to address different concerns. Despite its extended discussion, the majority essentially determines nothing more than that "based on professional negligence" means whatever this court says at any particular moment. (See maj. opn., *ante*, at pp. 40, 41-42.) Under the Court of Appeal's analysis, it is unnecessary to address the meaning of this phrase here "because [] [defendants'] appeal fails even if the phrase [] includes [] a case alleging reckless neglect."

For the foregoing reasons, I would affirm the judgment but on the analytical basis set forth by the Court of Appeal. ***47**

Cal. 1999.
Delaney v. Baker
20 Cal.4th 23, 971 P.2d 986, 82 Cal.Rptr.2d 610, 99 Cal. Daily Op. Serv. 1637, 1999 Daily Journal D.A.R. 2085

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Court of Appeal, Third District, California.
DEPARTMENT OF FINANCE, Plaintiff and Appellant,
v.
COMMISSION ON STATE MANDATES, Defendant and Respondent.
No. C056833.

Feb. 6, 2009.

Background: State Department of Finance petitioned for a writ of administrative mandamus to overturn decision of Commission on State Mandates that the Public Safety Officers Procedural Bill of Rights Act (POBRA) constituted a state-mandated program for school districts and special districts that employed peace officers. The Superior Court, Sacramento County, No. 07CS00079,Lloyd G. Connelly, J., denied writ. Department of Finance appealed.

Holding: The Court of Appeal, Butz, J., held that POBRA did not constitute state-mandated program for school districts and special districts that was reimbursable under state constitutional provision.

Reversed.

Scotland, P.J., concurred and filed opinion.

West Headnotes

[1] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
If a local government participates voluntarily, i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement under state constitution. West's Ann.Cal. Const. Art. 13B, § 6.

[2] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
As to cities, counties, and such districts that have as an ordinary, principal, and mandatory duty the provision of policing and firefighting services within their territorial jurisdiction, new statutory duties that increase the costs of police and firefighter services are prima facie reimbursable under state constitutional provision requiring state to bear the costs of new mandates on local government; this is true, notwithstanding a potential argument that such a local government's decision is voluntary in part, as to the number of personnel it hires. West's Ann.Cal. Const. Art. 13B, § 6.

[3] Schools 345 ⚿148(1)

345 Schools
345II Public Schools
345II(L) Pupils
345k148 Nature of Right to Instruction in General
345k148(1) k. In General. Most Cited Cases
A school district has an analogous basic and mandatory duty to educate students.

[4] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary for purposes of determining if state reimbursement under state constitutional provision requiring state to bear the costs of new mandates on local government. West's Ann.Cal. Const. Art. 13B, § 6.

[5] States 360 ⚿111

360 States

360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Public Safety Officers Procedural Bill of Rights Act (POBRA) did not constitute a state-mandated program for school districts and special districts that was reimbursable under state constitutional provision requiring state to bear the costs of new mandates on local government; the districts were permitted by statute, but not required, to employ peace officers who supplemented the general law enforcement units of cities and counties. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 3300 et seq.
*See Cal. Jur. 3d, Schools, § 8; Cal. Jur. 3d, State of California, § 102; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Tax, §§ 120, 121.***94** Edmund G. Brown, Jr., Attorney General, Christopher E. Krueger, Assistant Attorney General, Douglas J. Woods, Jill Bowers and Jack Woodside, Deputy Attorneys General, for Plaintiff and Appellant.

Camille Shelton, Chief Legal Counsel, for Defendant and Respondent.

BUTZ, J.

*1357 Article XIII B, section 6 of the California Constitution [FN1] requires the state to **95 BEAR THE COsts of new mandates on local government. However, if a local government entity voluntarily undertakes the costs, they do not constitute a reimbursable state mandate. (See, e.g., *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 884-887, 16 Cal.Rptr.3d 466, 94 P.3d 589 (*San Diego Unified School Dist.*); *1358*Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742-745, 134 Cal.Rptr.2d 237, 68 P.3d 1203 (*Kern High School Dist.*).) The Public Safety Officers Procedural Bill of Rights Act (POBRA),[FN2] initially enacted in 1976 (Stats.1976, ch. 465, § 1, p. 1202), requires state and local government agencies that employ peace officers to provide them with procedural rights and protections when they are subjected to investigation, interrogation or discipline. (Gov.Code, § 3300 et seq.)

FN1. Article references are to the California Constitution.

Article XIII B, section 6, subdivision (a), in pertinent part, states as follows: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, [subject to specified exceptions]."

FN2. The statute's commonly used name is the Peace Officers Bill of Rights Act and the acronym POBRA is one used by the Supreme Court. (See *Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 317 & fn. 1, 320, 74 Cal.Rptr.3d 891, 180 P.3d 935.)

In this case plaintiff state Department of Finance (Finance) petitioned for a writ of administrative mandamus to overturn the decision of defendant Commission on State Mandates (the Commission) that POBRA constitutes a state-mandated program for school districts and special districts that employ peace officers. The superior court denied the petition. We decide POBRA is not a reimbursable mandate as to school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties. The judgment denying Finance's petition for writ of administrative mandamus is reversed.

FACTUAL AND PROCEDURAL BACKGROUND

In 1995, the City of Sacramento filed a test claim with the Commission pursuant to the versions of Government Code sections 17521 and 17560 then in effect, seeking reimbursement under article XIII B, section 6, of the costs incurred in complying with the POBRA procedural requirements. In 1999, pursuant to the version of Government Code section 17551 then in effect, the Commission held a public hearing on the test claim and issued a statement of decision determining that certain POBRA procedural protections exceeded federal and state constitutional due process requirements and imposed reimbursable state-mandated costs upon cities, counties, school districts and special districts under article XIII B, section 6. In 2000, pursuant to Government Code section 17557, the Commission adopted parameters

and guidelines for the reimbursement of the costs incurred by those local government entities in providing the POBRA procedural protections determined to be state-mandated.

In 2005, the Legislature enacted Government Code section 3313, directing the Commission to "review its statement of decision regarding the [POBRA] test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist. [v. Commission of State Mandates]* (2004) 33 Cal.4th 859[, 16 Cal.Rptr.3d 466, 94 P.3d 589] and other applicable court decisions." (Gov.Code, § 3313, added by Stat.2005, ch. 72, § 6, eff. July 19, 2005.)

****96 *1359** Pursuant to Government Code section 3313, on April 26, 2006, the Commission held a public hearing. The only pertinent factual "testimony" at the hearing was an assertion that most school districts do not employ peace officers: "Of the approximately 1,200 local educational agencies receiving state school safety grant funding, only approximately 140 of those reported using the funding for hiring peace officers." After the matter was submitted, the Commission adopted a statement of decision reconsidering its 1999 statement of decision. The Commission decided that POBRA imposes, consistent with *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, a partial, reimbursable state-mandated program on cities, counties, school districts, and special districts identified in Government Code section 3301 that employ peace officers. As to the school districts and special districts, the Commission reasoned as follows:

"For the reasons below, the Commission finds that the [POBRA] legislation constitutes a state-mandated program for school districts and the special districts identified in Government Code section 3301 that employ peace officers.

"Under a strict application of the *City of Merced [v. State of California* (1984) 153 Cal.App.3d 777, 200 Cal.Rptr. 642] case, the requirements of the [POBRA] legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 for school districts and the special districts that employ peace officers 'for the simple reason' that the ability of the school district or special district to decide whether to employ peace officers 'could control or perhaps even avoid the extra costs' of the [POBRA] legislation. But here, the Legislature has declared that, as a matter of statewide concern, it is necessary for [POBRA] to apply to all public safety officers, as defined in the legislation. As previously indicated, the California Supreme Court [in *Baggett v. Gates* (1982) 32 Cal.3d 128, 139-141, 185 Cal.Rptr. 232, 649 P.2d 874] concluded that the peace officers identified in Government Code section 3301 of the [POBRA] legislation provide an 'essential service' to the public and that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the state.

"In addition, in 2001, the Supreme Court [in *In re Randy G.* (2001) 26 Cal.4th 556, 562-563, 110 Cal.Rptr.2d 516, 28 P.3d 239] determined that school districts, apart from education, have an 'obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern.' The court further held that California fulfills its obligations under the safe schools provision of the Constitution (Cal. Const., art. I, § 28, ***1360** subd. (c)) by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline. The arguments by the school districts regarding the safe schools provision of the Constitution caused the Supreme Court in *San Diego Unified [School Dist.]* to question the application of the *City of Merced* case.

"[ ] ... [ ]

"Thus, as indicated by the Supreme Court in *San Diego Unified [School Dist., supra,* 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589], a finding that the [POBRA] legislation does not constitute a state-mandated program for school districts and special districts identified in Government Code section 3301 would conflict with past decisions like ****97***Carmel Valley [Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537, 234 Cal.Rptr. 795], where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that '[p]olice and fire protection are two of the most essential and basic functions of local government.' The constitutional definition of 'local

government' for purposes of article XIII B, section 6 includes school districts and special districts. (Cal. Const., art. XIII B, § 8[, subd. (d)].)

"Accordingly, the Commission finds that [POBRA] constitutes a state-mandated program for school districts that employ peace officers. The Commission further finds that [POBRA] constitutes a state-mandated program for the special districts identified in Government Code section 3301. These districts include police protection districts, harbor or port police, transit police, peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts." (Fns. omitted.)

In January 2007, Finance petitioned for a writ of administrative mandamus to overturn the decision of the Commission as to school districts and special districts permitted but not required to hire peace officers. The Commission answered, opposing the petition. After oral argument the matter was submitted. Thereafter, on July 3, 2007, the trial court issued its ruling, denying the petition on the following essential reasoning:

"As a practical matter, the establishment of a police department and the employment of peace officers by school districts, community college districts and other local agencies is not an optional program: when the districts and agencies decide to exercise their statutory authority to employ peace officers, they do not have a genuine choice of alternative measures that meet their agency-specific needs for security and law enforcement, such as a large urban school district's need for security and police officers to supplement city ***1361** police or a municipal water district's need for park rangers with the authority and powers conferred upon peace officers to issue citations and make arrests in district recreational facilities. ([Pen.] Code, § 830.34, *subd.* (*d*) [subd. (*d*) added by] & Wat.Code, [§ 71341.5, added by] Stats.2004, ch. 799, [§§ 1 & 2]; [see] Sen. Com. on Public Safety, analysis of Assem. Bill No. 1119 [(2004 Reg. Sess.)] [granting 'essential authority' to municipal water districts to employ park rangers with the powers conferred on peace officers by Pen.Code, § 830.34, *subd.* (*d*),] [italics added].) Rather, the specific security and law enforcement needs of the districts and agencies compel their decisions to employ peace officers and prevent them from controlling or avoiding the costs of providing [POBRA] procedural protections, much as student misconduct that jeopardizes the safe, secure and peaceful learning environment for other students may provide the practical compulsion for a school district to pursue discretionary expulsion proceedings and subject the district to the costs of mandated hearing procedures. (See *San Diego Unified School Dist., supra,* 33 Cal.4th at p. 887, fn. 22, 16 Cal.Rptr.3d 466, 94 P.3d 589.) In marked contrast, the city in *City of Merced* had options to acquire property by eminent domain, by purchase or by other means and was not forced to proceed by eminent domain with its required payment for business goodwill, while the school districts in *Kern High School Dist.* could continue to operate and educate their students without participating in specified educational grant programs and without incurring the mandatory notice and agenda costs associated with the grant programs.

****98** "To the extent that school districts, community college districts and other local government agencies do exercise discretion in deciding to employ peace officers identified in Government Code section 3301, the decisions do not involve the type of discretion that would or should preclude reimbursement of state-mandated program costs under [article XIII B,] section 6. When the districts and agencies decide to use their specific statutory authorities and powers to employ peace officers, they determine how to use the authorities and powers to fulfill their existing obligations and functions, not to undertake new program activities. If such discretionary decisions by the districts and agencies are found to foreclose the districts and agencies from obtaining reimbursement of the [POBRA] costs triggered by their employment of peace officers, the state would be able to shift financial responsibility for carrying out new state-mandated program activities to the districts and agencies, in contravention of the intent underlying [article XIII B,] section 6 and [Government Code] section 17514. (*San Diego Unified School Dist., supra,* 33 Cal.4th at pp. 887-888[, 16 Cal.Rptr.3d 466, 94 P.3d 589].) Similarly, as the California Supreme Court observed in *San Diego Unified School Dist.*, the Court of Appeal in *Carmel Valley [Fire Protection Dist. v. State], supra,* 190 Cal.App.3d 521[, 234 Cal.Rptr. 795], apparently did not contemplate that discretionary decisions by local fire protection agencies regarding the number of firefighters the agencies needed to employ ***1362** to fulfill their essential fire-protection functions would foreclose reimbursement

of the costs incurred by the agencies for state-mandated protective clothing and safety equipment; such foreclosure of reimbursement, based on the agencies' discretion to limit the number of firefighters they employed and thereby control or even avoid the mandated costs, would contravene the intent underlying [article XIII B,] section 6 and [Government Code] section 17514. ([*San Diego Unified School Dist., supra,*] 33 Cal.4th at pp. 887-888[, 16 Cal.Rptr.3d 466, 94 P.3d 589].)" (Fn. omitted.)

Finance appeals from the judgment denying the petition.

DISCUSSION

Finance contends that the trial court erred in upholding the Commission's determination that, as to districts not compelled by statute to employ peace officers, the POBRA requirements are a reimbursable state mandate.[FN3] Finance argues that the judgment rests on the insupportable legal conclusion that these districts are, as a practical matter, compelled to exercise their authority to hire peace officers.[FN4] We agree.

> FN3. Government Code section 17514 states: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

> FN4. Whether a statute imposes a reimbursable state mandate is said to be a question of law. (E.g., *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.) In any event, that is the way the parties have litigated the issue in this case.

I. Case Law on Incurring Costs Voluntarily

The issue here principally turns on three leading opinions, commencing with **99*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 200 Cal.Rptr. 642 (*City of Merced*). *City of Merced* holds that an amendment of the eminent domain law requiring compensation for business goodwill is not a reimbursable mandate under former Revenue and Taxation Code section 2231, the antecedent of article XIII B, section 6. (*City of Merced, supra,* 153 Cal.App.3d at p. 783, 200 Cal.Rptr. 642.) The *City of Merced* rationale is that because the city was not required to obtain property by eminent domain, the program permitting use of that power was voluntary, and the requirement of compensation for business goodwill accordingly was not a mandate. "[W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of *1363 eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost." (*Ibid.*)

City of Merced is critiqued in the second case of the triad, *Kern High School Dist., supra,* 30 Cal.4th at pages 737-740, 134 Cal.Rptr.2d 237, 68 P.3d 1203. In *Kern High School Dist.*, the Commission decided that two statutes requiring school site councils and advisory committees for certain educational programs to provide notice of meetings and to post agendas for those meetings constituted a reimbursable state mandate under article XIII B, section 6. The Supreme Court held that the statutes do not constitute a reimbursable state mandate, as districts were neither legally compelled nor as a practical matter compelled to participate in the programs. (*Id.* at pp. 745, 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

In *Kern High School Dist.*, the Department of Finance asserted in its brief that based upon the language of article XIII B, section 6, and on the *City of Merced*, "a reimbursable state mandate arises only if a local entity is 'required' or 'commanded'-that is, legally compelled-to participate in a program (or to provide a service) that, in turn, leads unavoidably to increasing the costs incurred by the entity." (*Kern High School Dist., supra,* 30 Cal.4th at p. 741, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) The Supreme Court said, "[T]he core point articulated by the court in *City of Merced* is that activities undertaken at the option

or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate...." (*Id.* at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) The high court decided that, with one possible exception, the programs in issue were not legally compelled and that the possible exception was not a mandate because the state supplied sufficient funding to cover the additional costs. (*Id.* at pp. 743-748, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

The reimbursable mandate proponents argued that the legal compulsion standard was too narrow and that they should also be reimbursed because they had been compelled "as a *practical* matter" to participate in the programs. (*Kern High School Dist., supra,* 30 Cal.4th at p. 731, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) The Supreme Court summarized its response to that claim as follows: "Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion-for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program-claimants here faced no such practical compulsion. Instead, although claimants argue that they have had 'no true option or choice' other than to ****100** participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have ***1364** found the benefits of various funded programs 'too good to refuse'-even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (*Ibid.*)

"In sum, the circumstances presented in the case before us do not constitute the type of nonlegal compulsion that reasonably could constitute, in claimants' phrasing, a 'de facto' reimbursable state mandate. Contrary to the situation that we described in *City of Sacramento* [*v. State of California* (1990)] 50 Cal.3d 51[, 266 Cal.Rptr. 139, 785 P.2d 522], a claimant that elects to discontinue participation in one of the programs here at issue does not face 'certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences (*id.* at p. 74[, 266 Cal.Rptr. 139, 785 P.2d 522]), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations. Such circumstances do not constitute a reimbursable state mandate for purposes of article XIII B, section 6." (*Kern High School Dist., supra,* 30 Cal.4th at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

The last case of the triad that governs this case is *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589. In *San Diego Unified School Dist.,* the key issue was whether state requirements for expulsion hearings, not compelled by state criteria for expulsion and thus in a sense discretionary, were a reimbursable mandate. The holding did not reach that issue, as the court decided the costs were attributable to federal due process requirements. (*Id.* at pp. 888-890, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Nonetheless, the Supreme Court discussed at length the reach of *City of Merced's* "voluntary" rationale, and rejected extending it whenever some element of discretion in incurring the cost existed, e.g., in deciding how many firefighters to hire into a fire department. (*San Diego Unified School Dist.,* at pp. 886-888, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

"The Department and the Commission argue ... that any right to reimbursement for hearing costs triggered by discretionary expulsions-even costs limited to those procedures that assertedly exceed federal due process hearing requirements-is foreclosed by virtue of the circumstance that when a school pursues a discretionary expulsion, it is not acting under compulsion of any law but instead is exercising a choice. In support, the Department and the Commission rely upon *Kern High School Dist., supra,* 30 Cal.4th 727[, 134 Cal.Rptr.2d 237, 68 P.3d 1203], and *City of Merced*[, *supra,*] 153 Cal.App.3d 777[, 200 Cal.Rptr. 642]." (*San Diego Unified School Dist., supra,* 33 Cal.4th at p. 885, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

The Supreme Court went on to state, in *San Diego Unified School Dist.:*

"The District and amici curiae on its behalf (consistently with the opinion of the Court of Appeal below) argue that the holding of ***1365***City of Merced, supra,* 153 Cal.App.3d 777[, 200 Cal.Rptr. 642], should not be extended to apply to situations beyond the context presented in that case and in *Kern High School Dist., supra,* 30 Cal.4th 727[, 134 Cal.Rptr.2d 237, 68 P.3d 1203]. The District and amici curiae note that although any particular expulsion recom-

mendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program.

**101 "Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley [Fire Protection Dist. v. State], supra*, 190 Cal.App.3d 521[, 234 Cal.Rptr. 795], an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.* at pp. 537-538[, 234 Cal.Rptr. 795].) The court in *Carmel Valley [Fire Protection Dist. v. State]* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ-and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra*, 153 Cal.App.3d 777[, 200 Cal.Rptr. 642], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result." (*San Diego Unified School Dist., supra*, 33 Cal.4th at pp. 887-888, 16 Cal.Rptr.3d 466, 94 P.3d 589, fns. omitted.)

II. Costs of POBRA Are Incurred Voluntarily by School Districts and Special Districts That Are Permitted but Not Required to Employ Peace Officers

[1] The result of the cases discussed above is that, if a local government participates "voluntarily," i.e., without legal compulsion or compulsion as a *1366 practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement. The Commission concedes there is no legal compulsion for the school and special districts in issue to hire peace officers. As related, *Kern High School Dist.* suggests "involuntarily" can extend beyond "legal compulsion" to " compelled as a practical matter to participate." (*Kern High School Dist., supra*, 30 Cal.4th at p. 748, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) However, the latter term means facing " 'certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences" and not merely having to "adjust to the withdrawal of grant money along with the lifting of program obligations." (*Id.* at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) There is nothing in this record to show that the school and special districts in issue are practically compelled to hire peace officers.

The Commission points to two considerations to overcome the rule that participation in a voluntary program means additional costs are not mandates. The first is that the Legislature has declared that application of POBRA procedures to all **102 public safety officers is a matter of statewide concern. The second consideration is that the Legislature has promulgated various rights to public safety [FN5] and rights and duties of peace officers,[FN6] which it is claimed, recognize "the need for local government entities to employ peace officers when necessary to carry out their basic functions." Neither consideration persuasively supports the claim of practical compulsion.

> FN5. E.g., article I, section 28, subdivision (c) (announcing a right to attend grade school campuses which are safe); Education Code section 38000, subdivision (a) (authorizing school boards to hire peace officers to ensure safety of pupils and personnel); and Education Code section 72330, subdivision (a) (authorizing a community college district to employ peace officers as necessary to enforce the law on or near campus).

FN6. E.g., Penal Code sections 830.31-830.35, 830.37 (powers of arrest extend statewide), and 12025 (permitting peace officers to carry concealed weapons).

The consideration that the Legislature has determined that all public safety officers should be entitled to POBRA protections is immaterial. It is almost always the case that a rule prescribed by the Legislature that applies to a voluntary program will, nonetheless, be a matter of statewide concern and application. For example, the rule in *Kern High School Dist.* was that any district in the state that participated in the underlying funded educational programs was required to abide by the notice of meetings and agenda posting requirements. When the Legislature makes such a rule, it only says that if you participate you must follow the rule. This is not a rule that bears on compulsion to participate. (Cf. *Kern High School Dist., supra,* 30 Cal.4th at p. 743, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [the proper focus of a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs, not that costs incurred in complying with program conditions have been legally compelled].)

***1367** Similarly, we do not see the bearing on a necessity or practical compulsion of the districts to hire peace officers, of any or all the various rights to public safety and duties of peace officers to which the Commission points. If affording those rights or complying with those duties as a practical matter could be accomplished only by exercising the authority given to hire peace officers, the Commission's argument would be forceful. However, it is not manifest on the face of the statutes cited nor is there any showing in the record that hiring its own peace officers, rather than relying upon the county or city in which it is embedded, is the only way as a practical matter to comply.

The Commission submits that this case should be distinguished from *City of Merced* and *Kern High School Dist.* because the districts "employ peace officers when necessary to carry out the essential obligations and functions established by law." However, the "necessity" that is required is facing " 'certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences." (*Kern High School Dist., supra,* 30 Cal.4th at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203, quoting *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74, 266 Cal.Rptr. 139, 785 P.2d 522.) That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences.

The Commission notes that *Carmel Valley Fire Protection Dist. v. State* characterizes police protection as one of " 'the most essential and basic functions of local government.' " ****103**(*Carmel Valley Fire Protection Dist. v. State, supra,* 190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795, quoting *Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107, 133 Cal.Rptr. 649.) However, that characterization is in the context of cities, counties, and districts that have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction. A fire protection district perforce must hire firefighters to supply that protection.

[2][3][4] Thus, as to cities, counties, and such districts, new statutory duties that increase the costs of such services are prima facie reimbursable. This is true, notwithstanding a potential argument that such a local government's decision is voluntary in part, as to the number of personnel it hires. (See *San Diego Unified School Dist., supra,* 33 Cal.4th at p. 888, 16 Cal.Rptr.3d 466, 94 P.3d 589.) A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some "discretionary" expulsions will necessarily occur. (*Id.* at p. 887, fn. 22, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Accordingly, *San Diego Unified School Dist.* suggests additional costs of "discretionary" expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs ***1368** attendant to those actions cannot fairly and reasonably be characterized as voluntary under the rationale of *City of Merced.* (See *San Diego Unified School Dist., supra,* 33 Cal.4th at pp. 887-888, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

[5] However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only

reasonable means to carry out their core mandatory functions. As there is no such showing in the record, the Commission erred in finding that POBRA constitutes a state-mandated program for school districts and the special districts identified in Government Code section 3301. Similarly, the superior court erred in concluding as a matter of law that, "[a]s a practical matter," the employment of peace officers by the local agencies is "not an optional program" and "they do not have a genuine choice of alternative measures that meet their agency-specific needs for security and law enforcement."

DISPOSITION

The judgment is reversed. Each party shall bear its own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3), (5).)

I concur: BLEASE, J.SCOTLAND, P.J., concurring.
The Public Safety Officers Procedural Bill of Rights Act (POBRA) requires that peace officers employed by state and local governments must be provided with procedural rights and protections when they are subjected to investigation, interrogation, or discipline.

In this case, both the Commission on State Mandates and the trial court concluded that as to local school districts and special districts which are permitted by statute, but not required, to employ peace officers, the requirements of POBRA are a reimbursable mandate within the meaning of article XIII B, section 6 of the California Constitution, which compels the State to bear the costs of new mandates imposed on local governments.

****104** The Commission on State Mandates reasoned that finding POBRA requirements are not reimbursable mandates would conflict with various laws that require local districts to provide safe school environments for students.

***1369** The trial court held the State must reimburse local school districts and special districts for the cost of POBRA requirements because, "[a]s a practical matter, the establishment of a police department and the employment of peace officers by school districts, community college districts and other local agencies is not an optional program"; "they do not have a genuine choice of alternative measures that meet their agency-specific needs for security and law enforcement, such as a large urban school district's need for security and police officers to supplement city police or a municipal water district's need for park rangers with the authority and powers conferred upon peace officers to issue citations and make arrests in district recreational facilities."

My colleagues disagree with the Commission and the trial court. They conclude that because the local districts are not required to employ peace officers, and since there was no showing that exercising the authority to hire peace officers is the only reasonable means to carry out the districts' core mandatory functions, POBRA is not a reimbursable mandate as to those districts.

My instinct tells me the trial court was right in concluding that, even if such local districts are not compelled by law to hire peace officers to perform the districts' core functions, they must do so "as a practical matter." However, instinct is insufficient to support a legal conclusion.

As the Department of Finance points out, the administrative record "is silent concerning the law enforcement needs and practices of [K-12] school districts and special districts," and there is "no evidence showing that K-12 school districts cannot meet the safe schools requirement by relying on or contracting with city and county law enforcement." Indeed, as the Department notes, the trial court "correctly observed that one could not know, 'based on facts in this administrative record[,] that there is any law enforcement problem in any school in the State or the police have failed to provide adequate police services[.]' "

In sum, the Department persuasively argues: "Although state law authorizes these districts to hire peace officers, it does not require them to do so. Neither does state law penalize the districts in any way if they decide not to hire peace officers. Thus, state law does not legally or practically compel the districts to hire peace officers. And the districts are not entitled to reimbursement merely because their discretionary decision to hire officers triggers [POBRA]-related costs."

***1370** Accordingly, I agree with my colleagues that the California Supreme Court precedent discussed in

their opinion compels us to conclude that local districts' compliance with POBRA as to peace officers they employ is not a reimbursable State mandate because such districts are not required by law to employ peace officers and there is nothing in the record to support a finding that they are "practically" required to establish police departments and hire peace officers. Therefore, I concur in the opinion.

Cal.App. 3 Dist.,2009.
Department of Finance v. Commission on State Mandates
170 Cal.App.4th 1355, 89 Cal.Rptr.3d 93, 241 Ed. Law Rep. 255, 09 Cal. Daily Op. Serv. 1588, 2009 Daily Journal D.A.R. 1816

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H

Court of Appeal, First District, Division 3, California.
JACQUELINE T. et al., Plaintiffs and Appellants,
v.
ALAMEDA COUNTY CHILD PROTECTIVE SERVICES et al., Defendants and Respondents.
No. A116420.

Sept. 20, 2007.
As Modified Oct. 4, 2007.

Background: Mother, as guardian ad litem for her minor **children**, brought negligence action against **county** department of **child services** and two of its employees arising from the employees' investigation into possible sexual abuse of the **children**. The department and employees moved for summary judgment on the basis of immunity. After initially denying the motion, the Superior Court, **Alameda County**, No. RG04159625,Winifred Y. Smith, J., vacated its order in compliance with alternative writ of mandate from the Court of Appeal, and entered order granting summary judgment. Mother appealed.

Holdings: The Court of Appeal, Horner, J., sitting by assignment, held that:
(1) alleged acts or omissions by department employees were discretionary such that the employees were statutorily immune from liability and the department was immune from derivative liability, and
(2) the department did not fail to discharge a mandatory duty so as to be capable of being found directly liable.

Affirmed.

West Headnotes

[1] Infants 211 ⚿17

211 Infants
211II Protection
211k17 k. Societies, Agencies, and Officers in General. Most Cited Cases
Alleged acts or omissions by county department of child services employees in investigating allegations that mother's children had been sexually abused were discretionary, rather than operational or ministerial, such that the employees were statutorily immune from liability and, consequently, county was immune from derivative liability, in mother's negligence action; alleged acts or omissions did not pertain to the actual delivery of public social services, but involved preliminary determinations regarding whether such services were necessary. West's Ann.Cal.Gov.Code §§ 815.2, 820.2, 821.6.

[2] Municipal Corporations 268 ⚿727

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k727 k. Duties Absolutely Imposed. Most Cited Cases
An "enactment" imposed on a public entity for which the entity is under a mandatory duty to act, for purposes of waiver of liability under the California Tort Claims Act, may include both formal legislative measures, such as statutes, and quasi-legislative measures, such as regulations adopted by a state agency. West's Ann.Cal.Gov.Code § 815.6.

[3] Appeal and Error 30 ⚿170(1)

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k170 Nature or Subject-Matter of Issues or Questions
30k170(1) k. In General. Most Cited Cases
Mother failed to preserve for appellate review claims relating to county's waiver of immunity that were based on mandatory duties allegedly imposed by certain penal code provisions that mother did not include in her arguments to trial court. West's Ann.Cal.Gov.Code § 815.6.

[4] Infants 211 ⚿17

211 Infants
211II Protection

211k17 k. Societies, Agencies, and Officers in General. Most Cited Cases
County department of child services did not fail to discharge a mandatory duty imposed by the Child Abuse Neglect and Reporting Act (CANRA) so as to be liable under the California Tort Claims Act for alleged acts or omissions in relation to the investigation of mother's and others' reports that children were being sexually abused, even though the CANRA indicated legislature's intent that all persons participating in the investigation of child sexual abuse "shall do whatever is necessary to prevent psychological harm to the child victim;" the expression of legislative intent did not set forth a specific statutory duty. West's Ann.Cal.Gov.Code §§ 815.2, 815.6; West's Ann.Cal.Penal Code § 11164 et seq.

[5] Municipal Corporations 268 727

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k727 k. Duties Absolutely Imposed. Most Cited Cases
An enactment does not create a mandatory duty so as to hold governmental entity liable under the California Tort Claims Act for failing to discharge such duty if the enactment merely recites legislative goals and policies that must be implemented through a public agency's exercise of discretion. West's Ann.Cal.Gov.Code § 815.6.

[6] Infants 211 13.5(2)

211 Infants
211II Protection
211k13.5 Duty to Report Child Abuse
211k13.5(2) k. Liabilities; Immunity. Most Cited Cases

Infants 211 17

211 Infants
211II Protection
211k17 k. Societies, Agencies, and Officers in General. Most Cited Cases
County department of child services did not fail to discharge mandatory duties imposed by Child Abuse Neglect and Reporting Act (CANRA) reporting requirements so as to be liable under the California Tort Claims Act for alleged acts or omissions in relation to the investigation of reports that mother's children were being sexually abused; certain CANRA provisions pertained only to "reporters," whereas the department was a receiver of reports, and agency cross-reporting duties either did not pertain, were fully discharged by the department or, if not timely discharged, could not have caused the injuries suffered. West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Penal Code §§ 11166(a, f, i), 11166.3.

[7] Infants 211 13.5(2)

211 Infants
211II **Protection**
211k13.5 Duty to Report **Child** Abuse
211k13.5(2) k. Liabilities; Immunity. Most Cited Cases

Infants 211 17

211 Infants
211II **Protection**
211k17 k. Societies, Agencies, and Officers in General. Most Cited Cases
Penal code definition of "mandatory reporters" as to those required to report suspicions of sexual abuse of a **child**, which definition included **county** employees, did not impose a mandatory duty on **county** department of **child services** as would permit a finding that **county** was liable for failing to discharge such duty, in action brought by mother of **children** arising from the **county's** investigation of reports that mother's **children** were being sexually abused. West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Penal Code § 11165.7.

[8] Infants 211 17

211 Infants
211II **Protection**
211k17 k. Societies, Agencies, and Officers in General. Most Cited Cases
County department of **child services** did not fail to discharge a mandatory duty to accept reports of **child** sexual abuse so as to permit its liability under the California Tort Claims Act in mother's negligence action, absent evidence that **county** employees refused to accept reports of abuse regarding mother's

children. West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Penal Code § 11165.9.

[9] **Infants 211** 17

211 Infants
211II **Protection**
211k17 k. Societies, Agencies, and Officers in General. Most Cited Cases
County department of **child services** did not fail to discharge a mandatory duty imposed by the Welfare and Institutions Code to "respond to any report of imminent danger to a **child** immediately and all other reports within 10 calendar days," so as to be liable under the California Tort Claims Act for alleged acts or omissions in relation to the investigation of reports that mother's **children** were being sexually abused; after receiving the reports of suspected sexual abuse, the department determined that the **children** were not in imminent danger, and the department responded to the reports within 10 days. West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Welf. & Inst.Code § 16501(f).

[10] **Infants 211** 17

211 Infants
211II **Protection**
211k17 k. Societies, Agencies, and Officers in General. Most Cited Cases
There was no evidence that **county** department of **child services** failed to discharge a mandatory duty to utilize social workers "skilled in emergency response" when responding to referrals of reports of alleged **child** abuse, as required by the department's regulations manual, and thus, the department could not be liable under the California Tort Claims Act in mother's action alleging negligence in connection with the department's investigation into reports that mother's **children** were sexually abused. West's Ann.Cal.Gov.Code § 815.6.

**159 Stephen P. Ajalat, Ajalat & Ajalat, North Hollywood, for Appellant.

Rebecca S. Widen, Haapala, Altura, Thompson & Abern, Oakland, for Respondents.

**160 HORNER, J.[FN*]

FN* Judge of the **Alameda County** Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*459 This is an appeal from a judgment entered in favor of respondents **Alameda County Child Protective Services** (**County**) and two of its employees, Michael Yee and Paula Richards (collectively, Employees). Appellant **Jacqueline** T., individually and as Guardian Ad Litem for minors Roes 1 through 3 (collectively, Minors), filed a complaint alleging several causes of action sounding in negligence and negligence per se based on Employees' conduct in investigating reports of possible sexual abuse to Minors.

Respondents moved for summary judgment, which the trial court denied. Respondents then filed a petition for a writ of mandate or prohibition in this court, which we granted after concluding respondents were immune from liability under Government Code section 820.2 and/or section 821.6. Complying with the alternative writ, the trial court vacated its order denying *460 respondents' summary judgment motion and entered a new order granting the motion.

On appeal, Jacqueline T. raises essentially the same arguments she relied upon in opposing summary judgment and the petition for a writ of mandate or prohibition. And for the same reasons we rejected her arguments previously, we reject them here. The judgment will thus be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Jacqueline T. is mother to Minors with her former husband, Albert G. (collectively, parents). After they divorced, parents shared joint custody of Minors, while primary physical custody remained with Jacqueline T. Minors routinely had weekend visits with Albert G. at the house he shared with his girlfriend, Kelly D., and her 11-year-old son, N. On three occasions-in 1998, 1999, and 2000-County received reports alleging that N. was sexually abusing Roes 1 and 2 during their weekend visits with Albert G.

The first report was submitted on August 27, 1998 by Minors' therapist, Dr. Clark Conant. According to the report, Dr. Conant informed County that, during a visit to his office, Roe 2 screamed when using the toilet. Jacqueline T. then examined Roe 2 and found

redness in her vaginal area. When asked about the redness, Roe 2 explained she "hate[s] N." because "he sits on me and kisses me." Roe 1 then said that N. asked Roe 2 to kiss Roe 1 and to suck his penis.

After receiving the report, **County** immediately completed an Emergency Response Unit **Child Protective Services** (CPS) intake form and screener narrative, and the matter was referred to respondent Michael Yee, a **County** social worker, for investigation. During his subsequent investigation, Yee, among other things, contacted **Jacqueline** T.; prepared a history; visited the homes of both **Jacqueline** T. and Albert G.; conducted interviews of N., N.'s mother and siblings, and Minors; and spoke by telephone with Albert G.[FN1] In ****161** addition, on September 26, 1998, Yee cross-reported the alleged abuse to the Newark [City] Police Department, which decided not to pursue any action at that time. Ultimately, Yee concluded in a written investigative narrative that the ***461** child abuse allegations were unsubstantiated, noting in doing so that parents were engaged in a "messy child custody fight."

> FN1. Sometime later in 1998, Jacqueline T. was advised by a friend, Laura N., that Roe 2 said her "pee pee" hurt because "N." touches her there. Jacqueline T. told Laura N. that County was already investigating the alleged abuse, which had been reported by Minors' therapist, and requested that she call County to give this new information to the social worker in charge of the investigation. Laura N. did so, speaking to a man whose name she did not recall and giving him her phone number in case he later had questions. Laura N. did not hear from the man again.

The second report was submitted on October 29, 1999 by Minors' maternal great-grandmother. According to this report, Roe 2 told her great-grandmother during a bath to "lick her bootie." When the great-grandmother asked Roe 2 where she learned to say that, Roe 2 said from N.

Again, after receiving the report, County immediately conducted an Emergency Response Unit CPS intake form and screener narrative, and the matter was referred to respondent Paula Richards, another County social worker, for investigation. During Richards' subsequent investigation, she reviewed the file from Yee's investigation the prior year, and noted that the screener narrative identified the new allegations as substantially similar to the earlier ones that Yee had found unsubstantiated. Richards spoke several times by telephone with Jacqueline T. and attempted a home visit, but no one answered the door. She also obtained authorization from Jacqueline T. to speak to Minors' family court therapist, and thereafter spoke to the therapist several times.

Like Yee, Richards also cross-reported the alleged abuse to the Newark [City] Police Department. In doing so, Richards spoke to the officer assigned to the case, Detective Ramirez, who informed her that she was familiar with the family and had decided against pursuing a criminal investigation at that time, noting the family was dealing with several custody issues.

Ultimately, Richards deferred further investigation due in part to the ongoing and contentious family court proceedings and mediation. But Richards kept the matter open until 2000, when the third report of suspected abuse was received.

The third report on June 29, 2000 was again submitted by Minors' maternal great-grandmother, and then referred to Richards upon the immediate completion of an Emergency Response Unit CPS intake form and screener narrative. In the third report, the great-grandmother stated, among other things, that Roe 1 had told her N. was "gay," and when she asked him to explain why he believed this, Roe 1 had explained N. pulls his own and Roe 1's pants down and puts his private part on Roe 1 and in his face. The great-grandmother also reported that, when Jacqueline T. asked Roe 2 whether anyone had touched her private parts, she replied: "N. sometimes touches me with my pants off and my pants on." Roe 2 further told her: "I hate going there [to N.'s house] every time he does it, and I don't like it." ***462** Jacqueline T. then asked Roe 1 whether N. touched his private parts, and he responded, "not me, just [Roe 2]."

In response to the third report, Richards again cross-reported to Newark [City] Police Department, speaking to Detective Ramirez on July 7, 2000. County, in conjunction with the Newark [City] Police Department and the Alameda County District Attorney's office, then arranged for Child Abuse Listening Interview Coordination Center (CALICO) interviews of

Roes 1 and 2, which were conducted one-on-one by a forensic child interviewer on July 13, 2000.

Ultimately, all three agencies-County, the Newark [City] Police Department and the Alameda County District Attorney's office-concluded based on the evidence that the sexual abuse allegations were unsubstantiated. Thereafter, Richards concluded**162 in a written investigative narrative that nothing the children said during the CALICO interviews indicated they had been sexually abused, and that their encounters with N., including one in which, according to Roe 1, N. "put his dick-his private part on my face," were best described as "horseplay." [FN2] Richards thus closed the case file.

> FN2. During the CALICO interview, Roe 2 denied N. had sexually contacted or abused her, but described him as "really mean."

Sometime after the case was closed, N. admitted sexually molesting Roes 1 and 2. And during subsequent CALICO interviews, the children revealed much more specific evidence of N.'s abuse. N. was thus criminally charged for the abuse and detained in a juvenile detention facility.

On June 8, 2004, Jacqueline T. filed this lawsuit, asserting causes of action for: (1) child endangerment/negligence per se, (2) statutory violations/negligence per se, (3) negligence, and (4) negligent hiring, supervision and retention. After two rounds of amendments, respondents demurred to the second amended complaint on the ground that they were immune from liability under Government Code sections 821.6 and 820.2. The trial court overruled the demurrer. Respondents then moved for summary judgment on the same ground, which the trial court also denied.

On June 26, 2006, respondents filed a petition for writ of mandate or prohibition in this court, challenging the trial court's denial of its motion for summary judgment. After permitting informal briefing, this court issued an alternative writ of mandate directing the trial court to set aside and vacate its order denying summary judgment and to enter an order granting the motion. Alternatively, this court ordered the trial court to show cause why it should not be compelled to comply with the alternative writ.

*463 On August 11, 2006, the trial court complied with the alternative writ, issuing an order granting summary judgment to respondents. This court thus discharged the alternative writ and summarily denied the petition as moot. As such, no formal briefing was ordered, and the matter never came on calendar for hearing. Respondents have included the alternative writ as Exhibit B to Respondents' Brief. (***Alameda County Child Protective Services*** *et al. v. Superior Court of* ***Alameda County***, (Aug. 3, 2006, A114230) [Order issuing alternative writ].)

On September 12, 2006, **Jacqueline** T. filed a petition for review in the California Supreme Court, which was denied. On October 18, 2006, judgment was entered in favor of respondents, leading to this appeal.

DISCUSSION

Summary judgment shall be granted if all the papers submitted show there is no triable issue of material fact and that the moving party is entitled to judgment as a matter of law. We review this question of law independently. (Code Civ. Proc., § 437c, subd. (c); *Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1449-1450, 16 Cal.Rptr.2d 320.) In doing so, however, "we must view the evidence in a light favorable to ... the losing party [citation], liberally construing [his] evidentiary submissions while strictly scrutinizing [the prevailing party's] own showing, and resolving any evidentiary doubts or ambiguities in [the losing party's] favor." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768-769, 107 Cal.Rptr.2d 617, 23 P.3d 1143; **163*Barton v. Elexsys International, Inc.* (1998) 62 Cal.App.4th 1182, 1187-1188, 73 Cal.Rptr.2d 212.)

Here, summary judgment was granted on the ground that, as a matter of law, respondents are immune from liability for alleged negligence and negligence per se in connection with reporting, investigating and cross-reporting allegations that Roes 1 and 2 had been sexually abused. Jacqueline T. contends this grant of summary judgment on immunity grounds was erroneous because respondents' alleged investigatory failures amounted to breaches of "mandatory and ministerial" duties.

This court has once before addressed the issue of respondents' immunity under California law. As set

forth above, in issuing an alternative writ of mandate ordering the trial court to grant summary judgment in favor of respondents, we concluded both County and Employees were immune from liability under two statutes-Government Code sections 821.6 and/or 820.2. In so concluding, we reasoned that "the investigation of allegations of child abuse and the decision of what action, if any, should be taken are uniquely ***464** governmental functions. [fn.] A decision to remove a child from his/ her home or not to do so and the investigation that informs that decision involve precisely the kinds of 'sensitive policy decision[s] that require [ ] judicial abstention to avoid affecting a coordinate governmental entity's decisionmaking or planning process.' (*Barner* [*v. Leeds* (2000) 24 Cal.4th 676,] 688[, 102 Cal.Rptr.2d 97, 13 P.3d 704].)"

Despite having previously explained via the alternative writ our conclusion that respondents are entitled to immunity, we consider the issue anew on appeal, given that we summarily denied respondents' writ petition as moot, without ordering formal briefing or giving the parties the opportunity for oral argument, when the trial court complied with the writ. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 894, 899, 12 Cal.Rptr.2d 728, 838 P.2d 250 [where a respondent to a petition for writ of mandate chooses to act in conformity with the alternative writ, the petition becomes moot and there is no cause to be decided by the court of appeal in a written opinion].) We therefore turn again to the relevant law.

Under the California Tort Claims Act, Government Code section 810 et seq., [FN3] "[e]xcept as otherwise provided by statute: [¶] (a) A public entity *is not* liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." [FN4] (§ 815, subd. (a) [emphasis added] [Stats.1963, ch. 1681, § 1, p. 3268].) "The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person."(*id.* at subd. (b).)

FN3. All references to a particular code section are to the section in effect on the date when the relevant conduct allegedly occurred.

FN4. Unless otherwise stated, all statutory citations herein are to the Government Code.

Here, Jacqueline T. sets forth two statutory bases for holding respondents liable under the California Tort Claims Act. First, Jacqueline T. seeks to hold County derivatively liable for the alleged acts or omissions of Employees under section 815.2. Second, she seeks to hold County directly liable for alleged acts or omissions under section 815.6. We address each claim in turn.

A. Liability Under Section 815.2.

"A public entity is liable for injury proximately caused by an act or omission of an ****164** employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative."(§ 815.2, subd. (a); Stats.1963, ch. 1681, § 1, p. 3268.) "Except as ***465** otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability."(§ 815.2, subd. (b).) (Stats 1963, ch. 1681, § 1, p. 3268.)

Here, Jacqueline T. seeks to hold County derivatively liable for Employees' alleged acts or omissions in investigating allegations that Roes 1 and 2 had been sexually abused. Respondents, in turn, argue Employees, and thus County, are immune from such liability under section 820.2 and section 821.6. Section 820.2 provides: "... a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Section 821.6, in turn, provides: "... a public employee is not liable for injury caused by his [or her] instituting or prosecuting any judicial or administrative proceeding within the scope of his [or her] employment, even if he [or she] acts maliciously and without probable cause." (Stats 1963, ch. 1681, § 1, p. 3269; Stats 1963, ch. 1681, § 1, p. 3270.)

Our California Supreme Court has recently considered a claim of a public employee's so-called discretionary act immunity under section 820.2. In *Barner v. Leeds, supra,* 24 Cal.4th 676, 102 Cal.Rptr.2d 97,

13 P.3d 704, the court concluded "not all acts requiring a public employee to choose among alternatives entail the use of 'discretion' within the meaning of section 820.2." (*Barner, supra,* 24 Cal.4th at pp. 684-685, 102 Cal.Rptr.2d 97, 13 P.3d 704 [*Barner*].) Rather, immunity is limited to policy and planning decisions, and does not reach "lower level decisions that merely implement a basic policy already formulated." (*Id.* at p. 685, 102 Cal.Rptr.2d 97, 13 P.3d 704.) "The scope of the discretionary act immunity 'should be no greater than is required to give legislative and executive policymakers sufficient breathing space in which to perform their vital policymaking functions.' " (*Ibid.*)

Applying this rule to the facts before it, the *Barner* court concluded a public defender's initial decision to provide representation to a criminal defendant was a "sensitive policy decision" subject to discretionary act immunity under section 820.2. (*Barner, supra,* 24 Cal.4th at p. 688, 102 Cal.Rptr.2d 97, 13 P.3d 704.) A public defender's subsequent decisions in implementing that initial decision, such as decisions regarding the type and extent of legal services to provide the defendant, however, were "operational," i.e. related to policy implementation, and thus not subject to immunity under section 820.2. (*Ibid.*)

Here, not surprisingly, Jacqueline T. argues Employees' alleged tortious acts were "operational decisions," and thus not immunized by § 820.2. She reasons that "[m]any of the decisions inherent to th[e] [investigatory] process"-including whether to accept a report of child abuse from a reporter, ***466** whether to prepare an internal report and to timely cross-report to other agencies, whether to respond immediately, whether to utilize social workers skilled in emergency response, whether to interview certain individuals regarding the allegations or to have in-person contact with the alleged victim, and whether to take further actions to protect the victim-are "largely *operational* or *ministerial* decisions pertinent to the 'implementation' of those and ****165** other prescribed duties, as well as to the overall investigative function."

Several appellate courts, however, have rejected such reasoning. Those courts have held that a social worker's decisions relating to, as here, the investigation of child abuse, removal of a minor, and instigation of dependency proceedings, are discretionary decisions subject to immunity under section 820.2, and/or prosecutorial or quasi-prosecutorial decisions subject to immunity under section 821.6. (E.g., *Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 882-883, 271 Cal.Rptr. 513 [county and its social workers held immune from liability under "either or both of [sections 820.2 and 821.6]" for alleged negligence in investigating report of child molestation] [*Alicia T.*]; *Jenkins v. County of Orange* (1989) 212 Cal.App.3d 278, 282-283, 260 Cal.Rptr. 645 [county and its social workers held immune from liability under section 821.6 for "fail[ing] to use due care by not thoroughly investigating the child abuse report and fail[ing] to weigh and present all the evidence"] [*Jenkins*]; *Newton v. County of Napa* (1990) 217 Cal.App.3d 1551, 1559-1561, 266 Cal.Rptr. 682 [citing section 820.2 in holding county immune from liability for actions "necessary to make a meaningful investigation" of child abuse] [*Newton*]; *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 633, 644-645, 125 Cal.Rptr.2d 637 [county held immune from liability under section 820.2 for alleged negligent placement and supervision of child in foster home where child was sexually molested] [*Terrell R.*]; see also *Ronald S. v. County of San Diego* (1993) 16 Cal.App.4th 887, 899, 20 Cal.Rptr.2d 418 [county held immune from liability under section 821.6 for negligent selection of an adoptive home for a dependent child] [*Ronald S.*].) Such courts have reasoned that "[c]ivil liability for a mistaken decision would place the courts in the 'unseemly position' of making the county accountable in damages for a 'decisionmaking process' delegated to it by statute." (E.g., *Newton, supra,* 217 Cal.App.3d at p. 1560, 266 Cal.Rptr. 682. See also *Ronald S., supra,* 16 Cal.App.4th at p. 897, 20 Cal.Rptr.2d 418["[t]he nature of the investigation to be conducted and the ultimate determination of suitability of adoptive parents [by social workers] bear the hallmarks of uniquely discretionary activity"].)

Alicia T. is illustrative. There, the plaintiff argued, as Jacqueline T. does here, that a social worker's investigative decision-making is ministerial and not discretionary. Rejecting this argument, the court explained: "It is necessary to protect social workers in their vital work from the harassment of civil ***467** suits and to prevent any dilution of the protection afforded minors by the dependency provisions of the Welfare and Institutions Code. Therefore, social workers must be absolutely immune from suits alleging the improper investigation of child abuse, removal of a minor from

the parental home based upon suspicion of abuse and the instigation of dependency proceedings." (*Alicia T., supra,* 222 Cal.App.3d at p. 881, 271 Cal.Rptr. 513.)

Similarly, relying on section 821.6, the court in *Jenkins* concluded a social worker was entitled to absolute immunity from liability arising out of her actions in investigating child abuse allegations, initiating dependency proceedings and removing a child from his custodial parent. (212 Cal.App.3d at p. 283-284, 287, 260 Cal.Rptr. 645.) In doing so, the court explained immunity under section 821.6 covers not just the act of filing a criminal complaint, but also other prosecutorial or quasi-prosecutorial functions such as weighing and presenting evidence when rendering a decision on whether to proceed with litigation. (*Id.* at p. 284, 260 Cal.Rptr. 645; see also ****166***Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1436-1437, 246 Cal.Rptr. 609; *Amylou R. v. County of Riverside* (1994) 28 Cal.App.4th 1205, 1209-1210, 34 Cal.Rptr.2d 319 [concluding that "since investigation is part of the prosecution of a judicial proceeding," (*id.* at p. 1211, 34 Cal.Rptr.2d 319) acts committed in the course of the investigation are covered by section 821.6].)

Of course, particularly in light of our Supreme Court's decision in *Barner,* we would be remiss to interpret the case law as supporting the proposition that all actions by social workers involve policy or prosecutorial decisions falling within the scope of statutory immunity. On this point, *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 141, 32 Cal.Rptr.2d 643 (*Scott*), is illustrative. There, the court held a social worker could be held liable for negligent supervision of a foster child where she failed to comply with regulations requiring her to make monthly home visits to the child. (*Id.* at p. 142, 32 Cal.Rptr.2d 643.) In doing so, the court reaffirmed *Alicia T.'s* holding that a social worker's decision to initiate dependency proceedings is a quasi-prosecutorial decision immunized by section 821.6. The court clarified, however, that the "actual delivery of public social services, such as foster care, to abused, neglected or exploited children," are actions governed by specific statutory or regulatory directives "which leave the officer no choice." (*Id.* at pp. 141, 143, 32 Cal.Rptr.2d 643.) As such, they would not be subject to immunity. (*Ibid.*)

Newton is also helpful. There, the court held a county was immune from liability for conduct relating to its investigation of reported child abuse, including "failing to properly, thoroughly and completely investigate the source and basis for the underlying [child abuse] complaint." ***468**(*Newton,* 217 Cal.App.3d at p. 1561-1562 and fn. 5, 266 Cal.Rptr. 682.)Immunity did not extend, however, "beyond actions implied in the decision to investigate" to "gratuitous actions, unnecessary for a proper investigation." (*Id.* at pp. 1560-1561, 266 Cal.Rptr. 682.) The county was thus not immune for such gratuitous actions as causing the minors to disrobe and stand naked in the presence of strangers and failing to seek or receive voluntary consent to disrobe them. (*Id.* at p. 1562 and fn. 5, 266 Cal.Rptr. 682.)

[1] With this case law in mind, we turn to the facts before us. Unlike in *Scott,* we are not concerned with the actual delivery of public social services to abused, neglected or exploited children. Rather, we are concerned with social workers' preliminary determinations regarding whether such services, including removal, were in fact necessary. Moreover, unlike in *Newton,* Jacqueline T. makes no claim that Employees engaged in "gratuitous actions" unnecessary for a proper investigation. Rather, the alleged acts and omissions of which Jacqueline T. complains-including the failure to conduct a reasonable and diligent investigation and to timely cross-report to other agencies-were incidental to Employees' investigation, within the scope of their employment, of reports of possible abuse to Roes 1 and 2, and Employees' subsequent conclusion that such reports did not warrant initiation of dependency proceedings. (*Newton,* 217 Cal.App.3d at pp. 1561-1562 and fn. 5, 266 Cal.Rptr. 682 ["failing to properly, thoroughly and completely investigate the source and basis for the underlying [child abuse] complaint" were not gratuitous actions unnecessary for a proper investigation].) As such, we conclude as a matter of law that Employees' alleged acts and omissions are covered by the broad grant of immunity section 821.6 affords to "[a public employee's] instituting or prosecuting****167** any judicial or administrative proceeding within the scope of his [or her] employment" (§ 821.6), as well as the grant of immunity section 820.2 affords to sensitive policy decisions that result from a governmental entity's unique decisionmaking or planning process (§ 820.2; *Barner, supra,* 24 Cal.4th at p. 688, 102 Cal.Rptr.2d 97, 13 P.3d 704).[FN5]

> FN5. That Employees ultimately decided against initiating dependency proceedings does not render section 821.6 inapplicable. As both the statute and the case law make clear, the quasi-prosecutorial decision whether to initiate such proceedings-whatever that decision is-is immunized. (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1293, 89 Cal.Rptr.2d 60 [district attorney's conduct was an exercise of prosecutorial discretion immunized under section 821.6 even though he decided not to prosecute an action].)

Further, because we conclude Employees are immune from liability for their alleged acts and omissions under sections 820.2 and 821.6, we conclude County is likewise immune. "Though sections 821.6 and 820.2 expressly immunize only the employee, if the employee is immune, so too is the County. (Gov.Code, § 815.2, subd. (b); ***469***Kayfetz v. State of California* (1984) 156 Cal.App.3d 491, 496 [203 Cal.Rptr. 33].)" (*Kemmerer v. County of Fresno, supra*, 200 Cal.App.3d at p. 1435, 246 Cal.Rptr. 609.)

We thus turn to the issue of County's direct liability under section 815.6.

B. Liability under Section 815.6.

[2] A public entity may be directly liable for failure to discharge a mandatory duty. Section 815.6 provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." (Stats.1963, ch. 1681, § 1, p. 3268.) An enactment for purposes of section 815.6 may include both formal legislative measures, such as statutes, and quasi-legislative measures, such as regulations adopted by a state agency. (*Scott, supra*, 27 Cal.App.4th at pp. 134, 142, 32 Cal.Rptr.2d 643.)

A public entity may *avoid* direct liability under section 815.6, as it may avoid derivative liability under section 815.2, by establishing that it has statutory immunity. Section 815, subdivision (b) provides: "[t]he liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person." Further, as set forth above, section 815.2, subdivision (b) provides: "Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." (Stats 1963, ch. 1681, § 1, p. 3268; see also *Kemmerer, supra*, 200 Cal.App.3d at p. 1435, 246 Cal.Rptr. 609["[t]hough sections 821.6 and 820.2 expressly immunize only the employee, if the employee is immune, so too is the County"].)

[3] Here, Jacqueline T. claims County may be held directly liable under section 815.6 for breach of mandatory duties imposed by the following enactments: (1) Penal Code section 11164 et seq.; (2) Penal Code section 11166, subdivision (a), (f), and (i); (3) Penal Code section 11166.3; (4) Penal Code section 11165.7; (5) Penal Code section 11165.9; (6) Welfare and Institutions Code section 16501, subdivision (f); and (7) Department of Social Services ****168** Manual of Policies and Procedures (DSS Manual) regulation 31-101.2.[FN6] We consider each claim below.

> FN6. In arguing that County and Employees breached certain mandatory duties in violation of section 815.6, Jacqueline T. relies in her opening brief on several enactments that she did not rely upon before the trial court, including Penal Code sections 11165 and 11166, subdivision (i). Because Jacqueline T. failed to raise arguments based on these enactments below, we decline to consider them here. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6, 76 Cal.Rptr.2d 457.)
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> Jacqueline T. also concedes that certain enactments she relied upon in her opening brief-including California Code of Regulations Title 11, Division 1, Chapter 9, sections 901(1), 930.60 and 930.61-impose no mandatory duties on County. Given her concession, we do not address these enactments here.
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> Finally, Jacqueline T. concedes she relied

on several DSS manual regulations in her opening brief that "are substantially similar to and cumulative of other code sections that have been cited by plaintiffs, and [that] are also similar and mostly cumulative as between themselves," including regulations 31-110.3, 31-115, 31-120, 31-125.22 and 31-125.2. Again, given her concession, we do not address these cumulative regulations here.

***470 (1) Penal Code section 11164 et seq. (Stats.1987, ch. 1444, § 1.5, p. 5369.)**

[4] Jacqueline T. contends Penal Code section 11164 et seq., also known as the Child Abuse and Neglect Reporting Act (CANRA), imposed a mandatory duty on County and Employees to investigate suspected child abuse. Moreover, Jacqueline T. contends County and Employees breached this mandatory duty, not by failing to investigate the alleged abuse, but rather by failing to "reasonably and diligently" investigate it.

Section 11164 provided:

"(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

"(b) The intent and purpose of this article is to protect children from abuse. In any investigation of suspected child abuse, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim." FN7

FN7. Penal Code section 11164 was amended effective January 1, 2001. (Stats.2000 ch. 916, § 1, p. 5164.) References here to Penal Code section 11164 are to the statute as it read prior to amendment, when the alleged child abuse occurred.

[5] As clear from this language, the statute imposed no mandatory duty on County or Employees. Rather, the statute merely stated the Legislature's "intent and purpose" in enacting CANRA, an article composed of over 30 separate statutes. As such, section 11164 provided no statutory basis for liability under section 815.6. (*Terrell R., supra,* 102 Cal.App.4th at p. 639, 125 Cal.Rptr.2d 637 [an enactment creates a mandatory duty for purposes of section 815.6 only if "it requires a public agency to take a particular action. [Citation.] An enactment does not create a mandatory duty if it merely recites legislative goals and ***471** policies that must be implemented through a public agency's exercise of discretion. [Citation.]"].)

Moreover, to the extent Jacqueline T., in citing Penal Code section 11164 generally, actually seeks to rely on unspecified sections of CANRA to establish liability, such attempt would likewise fail. The law is clear that, to prove a violation under section 815.6, a plaintiff must plead the existence of a specific statutory duty. " 'Unless the applicable enactment is alleged in specific terms, a court cannot determine whether the enactment relied upon was intended to impose an obligatory duty to ****169** take official action to prevent foreseeable injuries or whether it was merely advisory in character.' [Citation.]" (*Terrell R., supra,* 102 Cal.App.4th at p. 638, 125 Cal.Rptr.2d 637.)

(2) Penal Code section 11166, subdivisions (a), (f), and (i). (Stats.1996, ch. 1081 § 3.5, pp. 7410-7412.)

[6] Jacqueline T. contends Penal Code section 11166, subdivisions (a), (f) and (i) imposed mandatory duties on County and Employees to accept reports of abuse from mandated, voluntary and anonymous reporters; to make internal reports; and to timely cross-report to other agencies regarding suspected child abuse.[FN8] She further contends County and Employees breached these mandatory***472** duties when Yee allegedly failed to timely cross-report to law enforcement after receiving a report of suspected abuse from Minors' therapist,and****170** when Richards allegedly failed to timely prepare an internal report or to timely cross-report to law enforcement after receiving reports of suspected abuse from Minors' great-grandmother.

FN8. Jacqueline T. acknowledges the language in Penal Code section 11166, subdivision (j) and subdivision (g), upon which she relies on appeal, is part of the current version of the statute rather than the version in effect when the alleged breach occurred. Jacqueline T. explains, however, that the language in subdivision (j) is nearly identical to that found in subdivision (i) of the

prior version of the statute, and that the language in subdivision (g) is nearly identical to that found in subdivision (f) of the prior version of the statute, both of which were in effect at the relevant time and were relied upon below. We find Jacqueline T.'s reliance at various times on different versions of the same statute both confusing and frustrating. Nonetheless, rather than find waiver, which we are no doubt entitled to do, we give Jacqueline T. the benefit of the doubt and address the merits of her argument based on the version of the statute in effect during the relevant time period-from 1998 to 2000-which provided in relevant part:

> "(a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, 'reasonable suspicion' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis of reasonable suspicion of sexual abuse. [¶] ... [¶]
>
> "(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency. [¶]
>
> "(i) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision." (Stats.1996, ch. 1081, § 3.5, pp. 7410-7412.)

The relevant version of Penal Code section 11166, subdivision (a) required, with some exceptions, a child care custodian who "has knowledge of or observes a child, ... whom he or she knows or reasonably suspects has been the victim of child abuse" to report such abuse to a child protective agency immediately or as soon as practically possible. The relevant version of subdivision (f) permited, but did not require, "[a]ny other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency." And the relevant version of subdivision (i) required, with some exceptions, a county welfare department to "immediately, or as soon as practically possible" cross-report to law en-

forcement and certain other agencies by telephone "every known or suspected instance of child abuse," and to submit a written report of the known or suspected abuse to such agencies "within 36 hours" of receiving the relevant information.

We conclude Jacqueline T.'s reliance on these three provisions to prove violations of section 815.6 is misplaced. With respect to Penal Code section 11166, subdivision (a), a mandatory duty was imposed on certain ***473** mandated reporters, including child care custodians, of child abuse. Here, County and Employees were the alleged *receivers* of three reports of alleged child abuse from third parties rather than the reporters themselves. As such, they could not, as a matter of law, have breached a mandatory duty to report pursuant to this provision.

With respect to Penal Code section 11166, subdivision (g), it simply imposed no mandatory duty. Rather, it permited, but did not require, certain voluntary reporters to submit reports of child abuse. As such, neither County nor Employees could, as a matter of law, have violated a mandatory duty pursuant to this provision. (*Terrell R., supra,* 102 Cal.App.4th at p. 639, 125 Cal.Rptr.2d 637 [" 'application of [Government Code] section 815.6 requires that the enactment at issue be *obligatory* ' "].)

Finally, as set forth above, the relevant version of Penal Code 11166 subdivision (i) required a county welfare department to "immediately, or as soon as practically possible" cross-report by telephone to certain public agencies "every known or suspected instance of child abuse," and to then submit certain written reports within 36 hours. Here, it is undisputed that Employees cross-reported to the Newark [City] Police Department each of the three reports of alleged abuse it received. It is further undisputed that, following receipt of each of those cross-reports, the Newark [City] Police Department determined based on the evidence that the abuse allegations were unsubstantiated. As such, even assuming County or Employees breached a mandatory duty to *timely* cross-report under subdivision (i), Jacqueline T. could not, as a matter of law, establish that such breach was a proximate cause of Minors' alleged injuries, which section 815.6 requires.[FN9] (*Wilson v. County of San Diego* (2001) 91 Cal.App.4th 974, 980, 111 Cal.Rptr.2d 173 [to establish liability under section 815.6, a plaintiff "must ****171** demonstrate ... breach of the statute's mandatory duty was a proximate cause of the injury suffered"]; see also *Thai v. Stang* (1989) 214 Cal.App.3d 1264, 1274, 263 Cal.Rptr. 202["[i]f the same harm, both in character and extent, would have been sustained even had the actor taken the required precautions, his failure to do so is not even a perceptible factor in bringing it about and cannot [as a matter of law] be a substantial factor in producing it"].)

FN9. The first report of abuse, received August 27, 1998, was cross-reported by Yee on September 26, 1998. It is unclear when the second report, received October 29, 1999, was cross-reported by Richards. The third report, received June 29, 2000, was cross-reported by Richards on July 7, 2000.

***474 (3) Penal Code section 11166.3. (Stats.1988, ch. 898, § 1, pp. 2862-2863.)**

Jacqueline T. also claims breach of a mandatory duty to cross-report instances of known or suspected child abuse pursuant to Penal Code section 11166.3.[FN10]

FN10. The version of Penal Code section 11166.3 in effect during the relevant dates provided in full:

"(a) The Legislature intends that in each county the law enforcement agencies and the county welfare or social services department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or social services department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, in accordance with the requirements of subdivision (c) of Section 288, evaluate what action or actions would be

> in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or social services department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Sections 859 and 1430. The child protective agency shall send a copy of its investigative report and any other pertinent materials to the licensing agency upon the request of the licensing agency.
>
> "(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of Section 1502 or in Section 1596.750 or 1596.76 of the Health and Safety Code and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency." (Stats.1988, ch. 898, § 1, pp. 2862-2863.)

The only language in the relevant version of this statute that purported to govern County's conduct provided: "The county welfare department or probation department shall, *in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor,* evaluate what action or actions would be in the best interest of the child victim"... and then "submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation." (Emphasis added.) Here, undisputedly, no petition to initiate dependency proceedings had been filed pursuant to Welfare and Institutions Code section 300 when County's alleged breach of this duty occurred. As such, Penal Code section 11166.3 provided no basis for liability under section 815.6.

***475 (4) Penal Code section 11165.7. (Stats.1992, ch. 459, § 1, pp. 1824-1825.)**

[7] Jacqueline T. contends Penal Code section 11165.7, like section 11166, subdivision****172** (a), imposes a mandatory duty on County and Employees to report suspected child abuse, which they also breached in this case.[FN11]

> FN11. Penal Code section 11165.7 (Stats.1992, ch. 459, § 1, pp. 1824-1825) provides in relevant part:
>
> "(a) As used in this article, 'child care custodian' means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a headstart teacher; a licensing worker or licensing evaluator; a public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or

> a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.
>
> "(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
>
> "(c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.
>
> "(d) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse."

This provision sets forth the statutory definition of the term "mandated reporter"; it does not purport to impose any duty. As such, Jacqueline T.'s reliance on section 11165.7 to establish liability under section 815.6 fails.

(5) Penal Code section 11165.9. (Stats.1987, ch. 1459, § 16, p. 5521.)

[8] Jacqueline T. contends County and Employees breached a mandatory duty under Penal Code section 11165.9 to accept reports of suspected child abuse from mandated, voluntary and anonymous reporters. As Jacqueline T. concedes, however, a different version of this statute-one that merely set forth *476 the statutory definition of "child protective agency" and did not purport to impose any duty-was in effect when the alleged child abuse was occurring between 1998 and 2000.[FN12] Moreover, **173 even assuming County or Employees were subject at the relevant time to a mandatory statutory duty to accept reports of abuse, Jacqueline T. neglects to inform us how or when they breached such duty. The undisputed evidence proved County received three reports of possible child abuse of Roes 1 and 2-Yee received one report from Minors' therapist, and Richards received two reports from Minors' great-grandmother. While Jacqueline T. complains County and Employees failed to adequately respond to these reports, she does not contend County or Employees refused to accept them. Given this, we conclude Jacqueline T. cannot as a matter of law prove any breach of a mandatory duty to accept reports of abuse.

> FN12. The statute in effect during the relevant time provided: "As used in this article, 'child protective agency' means a police or sheriff's department, a county probation department, or a county welfare department. It does not include a school district police or security department." (Stats.1987, ch. 1459, § 16, p. 5521; repealed by Stats.2000, ch. 916, § 8, p. 5166.)
>
> The current version of Penal Code section 11165.9, which did not become effective until January 1, 2001, provides: "Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that

> agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction." (Stats.2000, ch. 916, § 8, p. 5166.)

(6) Welfare and Institutions Code section 16501, subdivision (f). (Stats.1996, ch. 1083, § 9, pp. 7593-7595.)

[9] Jacqueline T. contends County and Employees breached a mandatory duty under Welfare and Institutions Code section 16501, subdivision (f) to "respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days." FN13

> FN13. Welfare and Institutions Code section 16501, subdivision (f) provides:
>
> "(f) As used in this chapter, emergency response services consist of a response system providing in-person response, 24 hours a day, seven days a week, to reports of abuse, neglect, or exploitation, as required by Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code for the purpose of investigation pursuant to Section 11166 of the Penal Code and to determine the necessity for providing initial intake services and crisis intervention to maintain the child safely in his or her own home or to protect the safety of the child. *County welfare departments shall respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days.* An in-person response is not required when the county welfare department, based upon an evaluation of risk, determines that an in-person response is not appropriate. This evaluation includes collateral, contacts, a review of previous referrals, and other relevant information, as indicated." (Emphasis added.) (Stats.1996, ch. 1083, § 9, p. 7595.)

*477 With respect to the duty under this section to respond immediately to reports of imminent danger to a child, it is clear such duty arises only if a prior determination has been made that imminent danger exists-a discretionary determination expressly entrusted to County and Employees. (*Newton, supra,* 217 Cal.App.3d at p. 1560, 266 Cal.Rptr. 682.) As such, County's or Employees' determination that no imminent danger existed is protected by the broad grant of immunity sections 820.2 and 821.6 afford county welfare departments and their officials in investigating alleged acts of child abuse and thereafter deciding whether to instigate dependency proceedings. (*Newton, supra,* at p. 1560, 266 Cal.Rptr. 682 [concluding that county welfare department officials were immune from liability for their determination regarding whether an "emergency situation[ ]" existed that would trigger a mandatory duty to conduct an immediate in-person response pursuant to Welfare and Institutions Code section 16504]; see also **174 *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498, 507, 93 Cal.Rptr.2d 327, 993 P.2d 983 [where a statute calls for the exercise of judgment, expertise, and discretion, it does not create a mandatory duty within the meaning of section 815.6].)

With respect to the duty under Welfare and Institutions Code section 16501, subdivision (f) to "respond" within 10 days to "all other reports" of abuse, we conclude the undisputed evidence reveals no breach. Nowhere does the statute define "respond" or mandate a particular response. And here, County officials undisputedly responded to each report of alleged abuse of Roes 1 and 2 by promptly generating screener narratives and then referring the matters to social workers for investigation, well within 10 days of receiving the reports. To the extent Jacqueline T. contends these responses were inadequate, County's and Employees' decisions in this regard were again discretionary, and thus immunized under sections 820.2 and 821.6 for the reasons discussed. (*Haggis, supra,* 22 Cal.4th at p. 507, 93 Cal.Rptr.2d 327, 993 P.2d 983.)

(7) DSS Manual regulation 31-101.2.

[10] Finally, Jacqueline T. contends County breached a mandatory duty under DSS Manual regulation 31-101.2 to utilize social workers "skilled in emergency response" when responding to referrals of reports of alleged child abuse. FN14

> FN14. DSS Manual regulation 31-101.2 provides: "The social worker responding to

> a referral shall be skilled in emergency response."

We agree this regulatory language amounts to an order leaving County no choice but to utilize social workers skilled in emergency response when ***478** responding to a child abuse referral. (See *Scott, supra*, 27 Cal.App.4th at p. 141, 32 Cal.Rptr.2d 643.) However, even if County could be held liable for failing to obey this order, the record reveals no facts, disputed or otherwise, tending to prove a failure occurred in this case.

In particular, Jacqueline T. has failed to set forth any evidence that identifies what it means to be "skilled in emergency response." Further, the evidence Jacqueline T. has identified does not tend to prove that County utilized social workers *unskilled* in emergency response when responding to referrals with respect to the alleged abuse of Roes 1 and 2.

Jacqueline T. points us to nothing in the record tending to reveal a failure of skills or training with respect to Yee, and the undisputed evidence suggests otherwise. At the time of his investigation into the alleged abuse, Yee had been a social worker for 21 years, and had received extensive ongoing training in child abuse investigation.

With respect to Richards, Jacqueline T. points only to select portions of her deposition testimony where she admits to not being "aware of all the details of what [the DSS] manual says", to not knowing what the "[DSS] manual states" with respect to the significance to be given during an investigation (rather than during a referral) to a parent's history of substance abuse or criminal behavior, to receiving "more extensive training in Division 31 regulations ... after [her] investigation" in this case, and to not "hav[ing] [the department's protocols] memorized." Such evidence, however, without more, would not permit a reasonable person to conclude she was unskilled in emergency response. Rather, suggesting the contrary, undisputed evidence shows Richards held a degree in psychology and an advanced degree in social work, was assigned to County's emergency****175** response unit in 1998, over a year before she began investigating the alleged abuse of Roes 1 and 2, and began receiving ongoing professional training in child abuse investigation at the time of her hiring in 1998.

Based on this record, we conclude that, even viewing the evidence in a light favorable to Jacqueline T., as the law requires, no reasonable person could here find a breach of this duty. And such, Jacqueline T.'s argument based on DSS Manual regulation 31-101.2 provides no basis for holding County liable for negligence or negligence per se.

Accordingly, for the reasons set forth above, we conclude the grant of summary judgment to respondents was proper and, thus, affirm the judgment.

***479 DISPOSITION**

The judgment is affirmed.

We concur: POLLAK, Acting P.J., and SIGGINS, J.
Cal.App. 1 Dist.,2007.
Jacqueline T. v. Alameda County Child Protective Services
155 Cal.App.4th 456, 66 Cal.Rptr.3d 157, 07 Cal. Daily Op. Serv. 11,352, 2007 Daily Journal D.A.R. 14,709

END OF DOCUMENT

People v. Carskaddon
Cal.

THE PEOPLE, Respondent,
v.
LEROY CARSKADDON, Appellant.
Crim. No. 6140.

Supreme Court of California
Nov. 19, 1957.

HEADNOTES

(1) Statutes § 193--Construction--Penal Code.
Penal provisions are to be construed according to the fair import of their terms with a view to effect their objects and promote justice. (Pen. Code, § 4.)
See **Cal.Jur.**, Statutes, § 179; **Am.Jur.**, Statutes, § 413.

(2) Vagrancy § 2--Annoying Children--Purpose of Statute.
The purpose of Pen. Code, § 647a, subd. (1), declaring that a person who annoys or molests a child is a vagrant, is the protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of such offenders.
See **Cal.Jur.**, Vagrancy, § 2 et seq.; **Am.Jur.**, Vagrancy, § 2 et seq.

(3) Vagrancy § 2--Annoying Children--Construction of Statute.
'Annoy' and 'molest' are synonymously used in Pen. Code, § 647a, subd. (1), declaring that a person who annoys or molests a child is a vagrant; they generally refer to conduct designed to disturb or irritate, especially by continued or repeated acts, or to offend, and as used in the code section they ordinarily relate to offenses against children, with a connotation of abnormal sexual motivation of the offender.

(4) Vagrancy § 2--Annoying Children--Elements of Offense.
Ordinarily the annoyance or molestation which is forbidden by Pen. Code, § 647a, subd. (1), declaring that a person who annoys or molests a child is a vagrant, is not concerned with the state of the child's mind, but it is the objectionable acts of defendant that constitute the offense; if his conduct is so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would annoy or molest within the purview of the code section.

(5) Vagrancy § 5--Annoying Children--Evidence.
A conviction of vagrancy for annoying or molesting a 6-year-old girl (Pen. Code, § 647a, subd. (1)) was not sustained by evidence that defendant was in the company of the girl and a 4-year-old boy in a public park, that he walked down a public street with the girl by his side, and that when stopped and queried by an officer defendant stated that the girl was lost and he was taking her home, the mere circumstance that defendant and the girl were apparently not walking in the direction of the girl's home did not show that defendant was not innocently befriending the girl nor indicate that he did not intend later to take the girl home after going to 'the river to show her___' (which was the girl's statement not completed in the officer's testimony).

(6) Statutes § 118--Construction--Penal Statutes.
Penal statutes include only those offenses coming clearly within the import of the language used, and will not be given application beyond their plain intent.

SUMMARY

APPEAL from a judgment of the Superior Court of Sacramento County, Raymond T. Coughlin, Judge. Reversed.

Prosecution for annoying or molesting a child. Judgment of conviction reversed.

COUNSEL
Robert O. Fort, under appointment by the Supreme Court, for Appellant.
Edmund G. Brown, Attorney General, Doris H. Maier and J. M. Sanderson, Deputy Attorneys General, for Respondent.

SPENCE, J.
Defendant appeals from a judgment of conviction for violation of section 647a, subdivision (1), of the Penal Code. He contends that the evidence is insufficient to sustain his conviction. The evidence is uncontradicted and although we have viewed it in the light most favorable to the prosecution (*People v.*

Moore, 137 Cal.App.2d 197, 200 [290 P.2d 40]), we have nevertheless concluded that defendant's contention must be sustained.

On April 19, 1956, at Southside Park in Sacramento, Anthony Bakazan stopped his automobile at a street curb to eat lunch in his car. He saw defendant take a little girl, aged 6, and a little boy, aged 4, underneath a large tree about 30 feet inside the park. They sat there a short time; then *425 Bakazan saw the boy leave while the girl remained. As Bakazan walked back and forth a few times, watching defendant, the latter would sometimes so move that the tree briefly obscured Bakazan's view. However, Bakazan managed to keep 10 to 30 feet distant from defendant and the girl, and he had a full view of defendant for all but about a minute of the 10 minutes that they stayed under the tree. Bakazan did not see defendant touch the girl.

After some 10 minutes under the tree, defendant and the girl walked to a concession stand where defendant bought the girl an ice-cream bar. Bakazan followed, keeping the two under observation at all times. He never spoke to defendant. Defendant and the girl proceeded up the street in a direction away from the park and toward the Sacramento River. Bakazan continued to follow and to watch, until a motorcycle officer came along. Bakazan called the officer's attention to defendant and the girl. The officer turned his motorcycle and approached defendant. Defendant saw the officer and started to walk ahead of the girl when the officer stopped him. In response to the officer's queries, defendant stated that the girl was not his but that she was lost and he was taking her home, after which he intended boarding a bus to another part of the city. In defendant's presence, the officer then asked the girl if defendant was taking her home. The officer testified that she replied, 'No, he was taking her down the river to show her___' The officer's testimony was interrupted at this point, and he did not complete his recital of the girl's statement. The officer did not see defendant make any motions with his arms or any other part of his body toward the girl but only observed them walking side by side down the street.

Section 647a, subdivision (1), of the Penal Code provides, as here pertinent: 'Every person who annoys or molests any child under the age of 18 is a vagrant and is punishable....' (1) Penal provisions are to be construed according to the fair import of their terms, with a view to effect their objects and to promote justice. (Pen. Code, § 4; *People v. Valentine*, 28 Cal.2d 121, 142 [169 P.2d 1]; *Ex parte Galivan*, 162 Cal. 331, 333 [122 P. 961]; *Downing v. Municipal Court*, 88 Cal.App.2d 345, 349-350 [198 P.2d 923].)

(2) The primary purpose of the above statute is the 'protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.' (*People v. Moore, supra*, 137 Cal.App.2d 197, 199; *426*People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) (3) The words 'annoy' and 'molest' are synonymously used (Words and Phrases, perm. ed., vol. 27, 'molest'); they generally refer to conduct designed 'to disturb or irritate, esp. by continued or repeated acts' or 'to offend' (Webster's New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to 'offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.' (*People v. Pallares, supra*, p. 901.) (4) Ordinarily, the annoyance or molestation which is forbidden is 'not concerned with the state of mind of the child' but it is 'the objectionable acts of defendant which constitute the offense,' and if his conduct is 'so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would 'annoy or molest' within the purview of the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

(5) Applying these principles to the record here, we find no evidence to support a finding that defendant had committed any objectionable act which would unhesitatingly irritate a normal person. The cases of *People v. McNair, supra*, 130 Cal.App.2d 696, and *People v. Moore, supra*, 137 Cal.App.2d 197, are therefore distinguishable. In each of those cases defendant committed a lewd and obscene act either in front of the child or with the child. No act of that type is shown by the present record. Rather it only appears that defendant was in the company of a 6-year-old girl and a 4-year-old boy in a public park, that he walked down a public street with the little girl by his side, and that when stopped and queried by the officer, defendant stated that the girl was lost and he was taking her home. It is true that the girl's mother testified as to their home address, which apparently was not in the direction in which defendant and the girl were walking. But such circumstance alone does not show that defendant was not innocently befriending the girl nor indicate that he did not intend later to take the girl home unharmed after going to 'the river to show her___' The statement of the girl was not completed in the officer's testimony and the record does not disclose the reason for the interruption.

In short, there is no substantial evidence of anything more than friendly noncriminal activity on the part of defendant toward the girl. Any mere suspicion that defendant might have intended to annoy or molest the girl at a later time would rest wholly in the realm of conjecture and would be insufficient *427 to sustain a conviction of the offense with which he was charged. (6) As was said in *DeMille v. American Fed. of Radio Artists*, 31 Cal.2d 139, at page 156 [187 P.2d 769, 175 A.L.R. 382]: 'Penal statutes will not be given application beyond their plain intent. Such acts include only those offenses coming clearly within the import of the language.'

The judgment is reversed.

Gibson, C. J., Shenk, J., Carter, J., Traynor, J., Schauer, J., and McComb, J., concurred.
Cal.
People v. Carskaddon
49 Cal.2d 423, 318 P.2d 4

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C

THE PEOPLE, Plaintiff and Respondent,
v.
ARTHUR E. HODGES et al., Defendants and Appellants.
No. Crim. A. No. 121292.

Appellate Department, Superior Court, San Diego County, California.

Aug 21, 1992.

SUMMARY

A pastor and assistant pastor at a church, who were also the president and principal of a school, were convicted of violation of the Child Abuse and Neglect Reporting Act (Pen. Code, § 11166, subd. (a)), based on evidence that defendants were acting in their capacity as child care custodians when a student sought help regarding molestation by her stepfather, and defendants failed to report it. (Municipal Court for the San Diego Judicial District of San Diego County, No. M569488, H. Ronald Domnitz, Judge.)

The appellate department of the superior court affirmed. The court held that the evidence was sufficient to support the jury's verdict that defendants were acting in their capacity as child care custodians under Pen. Code, § 11165.7. The victim was a student of the school, and defendants were involved in running it as well as holding pastoral positions with the church operating the school. The court further held that defendants' conduct was not protected religious activity under U.S. Const., 1st Amend., even if motivated by sincere religious beliefs. The court also held that the application of the Child Abuse and Neglect Reporting Act to defendants did not constitute excessive governmental entanglement with religion. The comprehensive reporting requirement was designed to ensure the health and safety of children and fulfills a vital and appropriate secular purpose. (Opinion by Moon, Acting P. J., with Tobin and Murphy, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Infants § 16--Offenses Against Infants--Child Abuse Reporting Act-- Application to Pastors at Religious School.
In a prosecution *21 of a pastor and assistant pastor at a church, who were also the president and principal of a school, for violation of the Child Abuse and Neglect Reporting Act (Pen. Code, § 11166, subd. (a)), the evidence was sufficient to support the jury's verdict that defendants were acting in their capacity as child care custodians when a student sought help regarding molestation by her stepfather. Under Pen. Code, § 11165.7, a child care custodian means a teacher, administrative officer, or supervisor of child welfare and attendance of any public or private school, and the jury was so instructed. The victim was a student of the school, and defendants were involved in running it as well as holding pastoral positions with the church operating the school.

(2a, 2b) Constitutional Law § 115--Due Process--Statutory Vagueness or Overbreadth--Child Abuse Reporting Act--Application to Pastors at Religious School.
The application of Pen. Code, § 11166, subd. (a), the Child Abuse and Neglect Reporting Act, did not violate due process by failing to give adequate notice of the reporting obligation to a pastor and assistant pastor of a church, who were also the president and principal of a religious school, and who were prosecuted under the act. All the relevant terms of the statute are defined therein with sufficient definiteness to give the constitutionally required degree of notice to those subject to its requirements. There was an obvious intent on the part of the Legislature not to create any exceptions to the reporting requirement, and the evidence established that defendants were aware of the law and were aware they were mandatory reporters under the law.

(3) Constitutional Law § 113--Due Process--Statutory Vagueness or Overbreadth--General Principles.
In considering whether a legislative proscription is sufficiently clear to satisfy the requirements of fair notice, courts look first to the language of the statute, then to its legislative history, and finally to judicial construction of the statutory language. The law requires citizens to apprise themselves not only of statutory language but also of legislative history, subsequent judicial construction, and underlying

legislative purpose. These principles suggest a legislative enactment must be upheld unless its unconstitutionality clearly, positively, and unmistakenly appears on the face of the statute. A statute should be sufficiently certain that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be void for uncertainty if any reasonable and practical construction can be given to its language.

(4) Constitutional Law § 53--Freedom of Religion--Conduct.
Two types of religious freedom are guaranteed by U.S. Const., 1st Amend.: *22 the freedom to believe and the freedom to act. The freedom to believe is absolute, but the freedom to act is not. Interference with religion by government action may be either direct or indirect. Direct interference is rare and results when the government enacts legislation directed specifically at a religious practice. Indirect interference is more often the case, and it occurs when a facially neutral statute impacts a religious practice. General regulations having an otherwise valid object are not necessarily rendered invalid by reason of some incidental effect on religious beliefs or observances; a balancing test is employed. Although a determination of what is a religious belief or practice entitled to constitutional protection may present a delicate question, the very concept of ordered liberty precludes allowing every person to make his or her own standards on matters of conduct in which society as a whole has important interests.

[See 7 Witkin, Summary of Cal. Law (9th ed.) Constitutional Law, § 376.]

(5a, 5b) Constitutional Law § 53--Freedom of Religion--Application of Child Neglect Reporting Act--Pastors at Religious School.
The failure of a pastor and assistant pastor of a church, who were also president and principal of a religious school, to report known child abuse as required by Pen. Code, § 11166, subd. (a), was not protected religious activity under U.S. Const., 1st Amend., even if motivated by sincere religious beliefs. The statute furthered a compelling state interest, the possible impairment of the physical or mental health of children. If defendants were exempt from the mandatory requirements of the reporting act, the act's purpose would be severely undermined, as there was no indication teachers and administrators of religious schools would voluntarily report known or suspected child abuse. Thus, children in those schools would not be protected. Moreover, the compelling state interest in the protection of children from abuse overrode any burden imposed on defendants' right to free speech, and forbade them to keep silent regarding child abuse.

[Validity, construction, and application of state statute requiring doctor or other person to report child abuse, note, 73 A.L.R.4th 782. See also Cal.Jur.3d (Rev), Constitutional Law, § 249; 7 Witkin, Summary of Cal. Law (9th ed. 1988) § 377.]

(6) Constitutional Law § 53--Freedom of Religion--Free Exercise.
The determination whether a statute unconstitutionally violates the *23 free exercise clause (U.S. Const., 1st Amend.) requires analysis of three factors: (1) the magnitude of the statute's impact on the exercise of the religious belief; (2) the existence of a compelling state interest justifying the burden imposed on the exercise of religious beliefs; and (3) the extent to which recognition of an exemption from the statute would impede the objectives sought to be advanced by the statute. The burden of proof with respect to the first prong lies with the plaintiff; if satisfied, the burden of proof with respect to the last two prongs shifts to the defendant.

(7) Constitutional Law § 53--Freedom of Religion--Establishment Clause.
To survive a challenge under the establishment of religion clause (U.S. Const., 1st Amend.), a statute must: have a secular purpose, neither advance nor inhibit religion as it principal primary effect, and not produce excessive governmental entanglement with religion.

(8) Constitutional Law § 53--Freedom of Religion--Establishment Clause--Application of Child Reporting Act to Religious School.
The application of the Child Abuse and Neglect Reporting Act (Pen. Code, § 11166, subd. (a)) to the pastor and assistant pastor of a church, who were also officials of the related religious school, did not constitute excessive governmental entanglement with religion. The comprehensive reporting requirement was designed to ensure the health and safety of children and fulfills a vital and appropriate secular purpose. Religious freedom is not absolute, and the act is limited in its intrusiveness and does not create an entanglement concern. The compelling state

interest furthered by the act justified the interference with defendants' religious practices when defendants were acting in the capacity of child care custodians within the meaning of the statute.

COUNSEL

Charles E. Craze for Defendants and Appellants.

Edwin L. Miller, Jr., District Attorney, Richard Neely, Assistant District Attorney, Brian Michaels, Chief Deputy District Attorney, and Caryn Rosen Viterbi, Deputy District Attorney, for Plaintiff and Respondent.

MOON, Acting P. J.

In what appears to be a case of first impression, we are asked to determine whether appellants, a pastor and assistant pastor of *24 the South Bay United Pentecostal Church, who are also the president and principal of the South Bay Christian Academy, were properly convicted of violating the Child Abuse and Neglect Reporting Act (Reporting Act), Penal Code section 11166, subdivision (a). [FN1] The statute provides in pertinent part, "(a) Except as provided in subdivision (b), any child care custodian ... who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible ...."

> FN1 All further statutory references are to the Penal Code unless otherwise indicated.

Appellants raise several challenges to their convictions: (1) there was insufficient evidence to find they are child care custodians within the scope of the statute; (2) the statute, section 11166, subdivision (a), violates due process by failing to give adequate notice that pastors who are involved in church schools are within the scope of the statute; (3) the statute as applied violates both the federal and state Constitutions by infringing on appellants' rights to the free exercise of religion and freedom of speech; and (4) the reporting statute violates the establishment clause of the First Amendment of the United States Constitution.

For the reasons set forth below, we affirm the convictions.

Facts

At trial, the victim, 20-year-old Christine G., testified she had attended South Bay Christian Academy, a school operated by the South Bay United Pentecostal Church. The school and church were located in the same building. Christine testified she had been a student at the school from age seven until she graduated from the high school at age seventeen. Appellant Arthur E. Hodges was president of the school (as well as the pastor of the church), and appellant, George Grant Nobbs was principal (and assistant pastor). Christine went to see appellant Hodges because he was the spiritual leader of the church and the head of the school.

Christine testified that when she was 17 years old (in March 1988) she decided to seek help from appellant Hodges by telling him her stepfather, Lyn M., a minister in the church, had been molesting her for many years. Christine testified she confided in a classroom teacher who, in turn, made an appointment with Mr. Hodges during the school day. Appellant Nobbs gave Christine permission to leave class early on the day of the appointment to see Mr. Hodges.

Christine testified she told Mr. Hodges what her stepfather had been doing to her: he touched her breasts and private parts. She testified Mr. Hodges *25 told her that he believed her. Christine did not want him to tell her stepfather, but Mr. Hodges said that he would have to be confronted. Mr. Hodges told Christine he would make arrangements for her to leave home when he talked to her stepfather. Christine went home and stayed in her room.

Christine testified she met with Mr. Hodges the day after he spoke with her stepfather. He told her that her stepfather confessed to everything and that he would be handling the situation. Mr. Hodges told Christine not to tell anyone about what her stepfather had done to her.

A few days later Mr. Hodges called Christine back into his office. He told her he had sent her stepfather to a retreat. Mr. Hodges handed her a letter of apology from her stepfather. This was approximately two weeks after their initial meeting.

Mr. Hodges wanted Christine's mother and stepfather to come into the office after she read the letter. Mr. Hodges wanted Christine to go home with her parents

because she was seeing her boyfriend against his instructions. Christine told Mr. Hodges she did not want to talk to her parents. He insisted, and they came into the office and spoke with her. Christine pleaded with Mr. Hodges not to make her go home with them because she was afraid of her stepfather. Mr. Hodges arranged to have her parents pick her up from school the next day and bring her home. Instead, Christine ran away. She also told others about the situation even though Mr. Hodges told her not to.

After running away, Christine received instructions to return to see Mr. Hodges. She went to his office during school hours. Appellant Nobbs was also there. Mr. Hodges told her unless she returned home she would not be allowed to return to school and she would not graduate. This meeting was held approximately a week and a half after Christine was given the letter. Christine returned home and left immediately after graduation.

Raylene M., Christine's mother, testified she was unaware her husband had been molesting her daughter until she was called to the church by Mr. Hodges. She stated Mr. Hodges insisted he handle the situation within the church. She testified Mr. Nobbs was aware of the facts, and she often went to him for strength and comfort.

Detective Duffy, a child abuse detective for the San Diego Police Department, testified that on August 19, 1988, he was assigned to follow up on a telephone call made by Christine regarding molest allegations. He stated he personally interviewed Christine. His partner interviewed her older sister, Michelle. After the interview, he decided to speak with appellants. This was *26 in September 1988. He and his partner went to the school and spoke first with the principal, Mr. Nobbs. After they informed Mr. Nobbs of their investigation, Mr. Nobbs stated he was not at liberty to talk about the situation alone; he would have to call his superior, Mr. Hodges.

Mr. Hodges came down from his office and introduced himself as the president of the school. The officer admonished him. Mr. Hodges told the detective in general terms he was aware of the allegations of molest, that Christine had disclosed to him many of the details, and he had handled the situation regarding Christine's stepfather. When asked why he did not report the information to the police office or child protective services or if he knew he was mandated to report, Mr. Hodges told the officer he knew of the reporting laws, and he understood he was a mandated reporter. Mr. Hodges told the officer he wanted to take care of the matter within the church. Mr. Hodges stated he disciplined the stepfather by having him write a letter of apology to the victim and by having the stepfather confess in front of the entire congregation. Additionally, Mr. Hodges took away his ministerial license. Mr. Hodges also told the officer he instructed Christine to return home; if she did not, she would not graduate.

Detective Duffy then went to Mr. Nobbs's office. He admonished Mr. Nobbs and asked him if he was aware of the allegation of molest. Mr. Nobbs told the officer he was aware of the situation. The officer also asked him why he did not report the molest since Christine was a student at his school. Detective Duffy testified Mr. Nobbs admitted he was aware that he was a mandated reporter and knew the laws. He did not report the suspected abuse because he and Mr. Hodges wanted to resolve the situation within the church. Mr. Nobbs told the officer he, as principal of the school, could not have allowed Christine to attend school if she was not living at home. He also stated he and Mr. Hodges talked to Christine about not being able to graduate unless she returned home.

Mr. Hodges testified he is the spiritual leader of the South Bay United Pentecostal Church. He stated he met with Christine in his office, the pastoral office of the church. The meeting began with a prayer. His wife was present. He stated Christine told him she was having trouble forgiving her stepfather. She told him her stepfather was hugging her wrong, letting his hand brush against her breast. She also told Mr. Hodges she felt her stepfather's penis touching her from behind.

Mr. Hodges told Christine they would have to confront her stepfather. Christine told Mr. Hodges she did not want the police involved. He stated *27 that after talking with Christine, he prayed and sought advice. He did not know he was supposed to contact the police. Even more important, he did not contact the police because he believed that his role in the matter was a pastoral one, specifically dealing with Christine's inability to forgive her stepfather. He did not believe the incidents described by Christine were "sexual abuse"; he believed they were sins. He stated he had to follow the Scriptures concerning disciplining a Christian.

Mr. Nobbs testified he is the assistant pastor of South Bay United Pentecostal Church. The major scope of his duties is to assist the pastor. He is the elder of the division of education. He is principal of the South Bay Christian Academy, responsible for the day-to-day operation of the school. He stated he discussed the situation with Mr. Hodges primarily in the context of his taking over Lyn M.'s ministerial duties. He stated Christine would have been able to attend school and graduate so long as she was living in harmony at home. If her parents had allowed her to live outside the family home, he would have no objections to her attending school and graduating. Her parents, however, wanted her home. He believed that when he received information concerning what had taken place between Christine and her stepfather, he was acting in a pastoral capacity as assistant pastor. Mr. Hodges told him there had been inappropriate touching by the stepfather. He knew no other details.

The jury found both appellants guilty as charged.

Issues

(1) *Was there substantial evidence to support the convictions?*

(1) Appellants first contend they were not acting as "child care custodians" within the meaning of the statute. According to appellants, Mr. Hodges was counseling Christine, a member of the church with a spiritual problem, as the pastor of the church. Appellants argue most of the meetings were not during school hours. They also argue Mr. Nobbs was not acting as a child custodian, but rather was called to be informed that Christine's stepfather would be relieved of his ministerial duties and Mr. Nobbs would have to assume them.

The jury was instructed on the definition of a child care custodian pursuant to section 11165.7: " '[C]hild care custodian' means a teacher; ... administrative officer, supervisor of child welfare and attendance ... of any public or private school." No objection to this instruction was raised by any party. *28

The record reflects substantial evidence to support the jury's finding that appellants were child care custodians. The school attended by the victim, South Bay Christian Academy, was operated by South Bay United Pentecostal Church. Both facilities shared the same building. While most students were members of the church, not all students were Religious and academic classes were taught. Appellants were involved in running the school as president and principal (as well as holding pastoral positions with the church). Appellant Nobbs took care of the day-to-day management of the school while appellant Hodges had overall responsibility for decisions concerning the school. Hodges presented diplomas at graduation which were signed by both Hodges and Nobbs.

Christine testified she sought help from Hodges when she was age 17 regarding her stepfather's continued molestation of her. She was excused from school early to see Hodges. A teacher made the appointment for her and Nobbs gave her permission to leave class early for the appointment. Hodges told Christine how he intended to handle the situation. Both appellants at one time told Christine if she did not move back home she would be unable to finish school and graduate. Christine testified she sought Hodges's help because he was in charge of the school.

The court must accept the evidence in the light most favorable to the judgment, and the court must presume in favor of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Reilly* (1970) 3 Cal.3d 421 [90 Cal.Rptr. 417, 475 P.2d 649].)

Here there is ample evidence to support the jury's verdict and decision that when Christine sought help, appellants were acting in their capacity as child care custodians.

(2) *Does the statute fail to provide adequate notice?*

(2a) Appellants next contend the statute, section 11166, subdivision (a), violates due process as applied to them, as it fails to give adequate notice of the obligation to report. Appellants rely on *Lambert v. California* (1957) 355 U.S. 225 [2 L.Ed.2d 228, 78 S.Ct. 240]. In *Lambert*, a convicted felon was convicted of a Los Angeles Municipal Code ordinance which required any convicted felon to register with the chief of police within five days of arriving in Los Angeles. The question before the court was, "whether a registration act of this character violates due process where it is applied to a person who has no actual knowledge of his duty to register, and where no showing is made of the probability of such knowledge." (*Id.*, at p. 227 [2 L.Ed.2d at p. 230].) The court held it did since the law did not provide an opportunity to *29 either avoid the consequences of the law or to defend in any prosecution brought under it.

(3) In considering whether a legislative proscription is sufficiently clear to satisfy the requirements of fair notice, we look first to the language of the statute, then to its legislative history, and finally to the California decisions construing the statutory language. The law requires citizens to apprise themselves not only of statutory language but also of legislative history, subsequent judicial construction and underlying legislative purpose. (*Walker v. Superior Court* (1988) 47 Cal.3d 112 [253 Cal.Rptr. 1, 763 P.2d 852].)

These principles suggest a legislative enactment must be upheld unless its unconstitutionality clearly, positively, and unmistakably appears on the face of the statute. A statute should be sufficiently certain that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be void for uncertainty if any reasonable and practical construction can be given to its language. (*Walker v. Superior Court, supra,* 47 Cal.3d 112.)

(2b) As respondent notes, the terms "child," "child abuse," and "child protective agency" are all defined in the Reporting Act, as is "child care custodian." The definition of "child care custodian" includes "an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school." (§ 11165.7.) The intent of the Reporting Act, as stated by the Legislature, is to protect children from abuse, including neglect, willful cruelty, or unjustifiable punishment and unlawful corporal punishment or injury.

The Legislature has been sufficiently definite in drafting the Reporting Act to give the constitutionally required degree of notice to those subject to its requirements.

Appellants also contend the statute as applied in this case is insufficiently specific given its impact on activities potentially subject to First Amendment protection. According to appellants, their right to free speech is compromised, since the statute compels appellants to speak what they do not wish to speak. Appellants argue they were obligated by the dictates of their faith and precepts stemming therefrom not to disclose to the community the contents of pastoral communications with Christine. Appellants' faith requires that matters involving dissension with the families of the congregation be handled by the church. The statute, according to appellants, does not clearly manifest a legislative intent to extend the mandatory reporting requirement to religious personnel who are engaged in the operation of a school and who *30 have not had training or education in the area of child abuse detection. Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression and/or conduct sheltered by the First Amendment, the vagueness doctrine demands a greater degree of specificity than in other respects. (*Smith v. Goguen* (1974) 415 U.S. 566 [39 L.Ed.2d 605, 94 S.Ct. 1242].)

Appellants' position is not persuasive. The statute is very carefully worded to inform any child care custodian (which is also very clearly defined) in any public or private school that he or she must report any incident of suspected child abuse. There was an obvious intent on the part of the Legislature not to create any exceptions to the reporting requirement. The statute is sufficiently specific to defeat a constitutional attack based on the vagueness doctrine. In any event, the evidence here established that appellants were aware of the law and were aware they were mandatory reporters under that law.

(3) *Does the statute, as applied, violate the free exercise of religion clause or free speech clause?*

Appellants next contend the statute, as applied in this case, violates the free exercise of religion clause of the United States Constitution. The First Amendment provides that Congress "shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

(4) The United States Supreme Court has established certain principles for determining whether conduct rooted in religious belief is protected by the free exercise clause. The First Amendment guarantees two types of religious freedom: the freedom to believe and the freedom to act. It is well settled that the freedom to believe is absolute, while the freedom to act is not. (See *Reynolds v. United States* (1879) 98 U.S. 145 [25 L.Ed. 244] [polygamy convictions upheld]; *Sherbert v. Verner* (1963) 374 U.S. 398 [10 L.Ed.2d 965, 83 S.Ct. 1790] [law conditioning unemployment benefits on willingness to work on petitioner's religious day struck down].)

Interference with religion by government action may

be either direct or indirect. Direct interference is rare and results when a government enacts legislation directed specifically at a religious practice. Indirect interference is more often the case, and it occurs when a facially neutral statute impacts a religious practice. General regulations having an otherwise valid object are not necessarily rendered invalid by reason of some incidental effect on religious beliefs or observances; a balancing test is employed. (7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 376, p. 548.) *31 Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his or her own standards on matters of conduct in which society as a whole has important interests. (*Wisconsin v. Yoder* (1972) 406 U.S. 205 [32 L.Ed.2d 15, 92 S.Ct. 1526].)

(5a) The issue, then, becomes whether appellants' failing to report known child abuse as required by the statute and instead choosing to handle the problem within the church, even if motivated by sincere religious beliefs, is protected religious activity under the First Amendment.

(6) In order to determine whether a statute unconstitutionally violates the free exercise clause, the United States Supreme Court requires analysis of the following three factors: (1) the magnitude of the statute's impact upon the exercise of the religious belief; (2) the existence of a compelling state interest justifying the burden imposed upon the exercise of religious belief; and (3) the extent to which recognition of an exemption from the statute would impede the objectives sought to be advanced by the statute. (*Callahan v. Woods* (1984) 736 F.2d 1269.) The burden of proof with respect to the first prong lies with plaintiff; if satisfied, the burden of proof with respect to the last two prongs shifts to defendant. (*Callahan, supra*, at pp. 1272-1275.)

(5b) Here, the trial court found the statute did impact on appellants' sincerely held religious beliefs. However, the lower court also found that the statute furthered a compelling state interest-the possible impairment of the physical or mental health of children. In *People* ex rel. *Eichenberger v. Stockton Pregnancy Control Medical Clinic, Inc.* (1988) 203 Cal.App.3d 255 [249 Cal.Rptr. 762], the court was faced with the issue whether reporting consensual sexual conduct of minors would violate their right to privacy. The court found no constitutional violation stating, "We have no doubt that the reporting to a child protective agency of a suspected violation of subdivision (a) of section 288, a felony, serves both a compelling ... and also significant state interest .... One compelling state interest is the apprehension of the perpetrator of a felony offense. A significant state interest not present in the case of an adult [where constitutional privacy rights are claimed] is the detection and prevention of child abuse." (*Id.*, at p. 241.)

Respondent relies on *North Valley Baptist Church v. McMahon* (E.D.Cal. 1988) 696 F.Supp. 518, as being factually similar to the case at bar. In *North Valley*, a religious group operating a preschool challenged the constitutionality of the California Child Care Facilities Act (*32Health & Saf. Code, § 1596.70 et seq.) By this act, the State Department of Social Services is authorized to establish, administer, and monitor a comprehensive program applicable to all day care centers. The act does not provide for distinctive treatment for religiously affiliated day care centers. The North Valley Baptist Church claimed it should be exempt from the act's licensing scheme because to comply would interfere with its constitutional right to " 'minister to the needs of the people without interference from government.' " (*North Valley, supra*, 696 F. Supp. at p. 522.) In analyzing whether the act unconstitutionally interfered with the church's right to free exercise of religion, the court first concluded that the licensure requirement did impose a substantial burden upon the plaintiff's religious expression. However, in spite of this burden the court held: "According to its stated purpose, the licensing requirement of the Child Care Facilities Act is designed to protect the health and safety of children receiving care outside their home. Without hesitation, the court finds this to be a compelling state interest of the highest order." (*Id.*, at p. 526.)

Here, too, appellants claim the school is an integral part of their church ministry and to comply with the reporting statute would threaten substantial impairment of the exercise of the Pentecostal faith. The court in *North Valley* rejected that argument, as does this court. The statute in no way infringes on appellants' religious practice when they are acting solely in the capacity of pastors. However, when, as here, a student seeks assistance from them as administrators of the school, their obligation under the statute arises. While the distinction between the

two positions may not always be clear, given the compelling state interest served by the Reporting Act, if the information comes to a teacher/principal/clergyman in any way through the school setting, reporting is mandatory. The compelling state interest furthered by the reporting statute, protecting children from child abuse, justifies any burden on appellants' religious practice.

The mere fact that a petitioner's religious practice is burdened by a governmental program does not mean an exception accommodating that practice must be granted. The state may justify an inroad on religious liberty by showing it is the least restrictive means of achieving some compelling state interest. (*Thomas v. Review Bd., Ind. Empl. Sec. Div.* (1981) 450 U.S. 707 [67 L.Ed.2d 624, 101 S.Ct. 1425].)

Here, if appellants are held to be exempt from the mandatory requirements of the Reporting Act, the act's purpose would be severely undermined. There is no indication teachers and administrators of religious schools would *33 voluntarily report known or suspected child abuse. Children in those schools would not be protected. The protection of all children cannot be achieved in any other way.

Appellants also contend that the statute impermissibly infringes on their First Amendment right to free speech in that the statute compels speech and is a content-based regulation. Respondent notes this objection was not raised in the court below, but also argues the same analysis given to the free exercise challenge must be applied to this free speech challenge-does the compelling state interest in the protection of children from abuse override the burden imposed on appellants' right to free speech? This court concludes it does; there is no other less intrusive way to satisfy the act.

(4) *Does the statute, as applied, violate the establishment clause of the First Amendment?*

(7) To survive an establishment of religion clause challenge, a statute must have a secular purpose, neither advance nor inhibit religion as its principal or primary effect, and not produce excessive governmental entanglement with religion. (*Lemon v. Kurtzman* (1971) 403 U.S. 602 [29 L.Ed.2d 745, 91 S.Ct. 2105].)

(8) Appellants argue the Reporting Act constitutes excessive governmental entanglement with religion. According to appellants, the court, by refusing instructions that appellants at all times were acting as clergy and not as child care custodians, took upon itself to define what is religious and what is secular among the varied activities of a pastor. The court, in effect, determined the activities of clergyman and child care custodians, in a church-operated school, are mutually exclusive. The court, in effect, has barred a pastor from religious counseling of suspected child abuse among the members of his or her congregation, thus interfering substantially with the pastoral role of its ministers.

The comprehensive reporting requirement is designed to ensure the health and safety of children and fulfills a vital and appropriate secular purpose. In *Prince v. Massachusetts* (1944) 321 U.S. 158 [88 L.Ed. 645, 64 S.Ct. 438], the court stated, "The right to practice religion freely does not include liberty to expose the community or the child to communicable diseases or the latter to ill health or death." (*Id.*, at pp. 166- 167 [88 L.Ed. at pp. 650- 653].)

As respondent notes, religious freedom is not absolute. Religious organizations engage in various activities such as founding colonies and operating libraries, schools, wineries, hospitals, farms and industrial and other commercial *34 enterprises. Conceivably they may engage in any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe. If they were given such freedom, the direct consequences of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. (*Gospel Army v. City of Los Angeles* (1945) 27 Cal.2d 232 [163 P.2d 704].)

The act is limited in its intrusiveness and does not create an entanglement concern. The state has a legitimate interest in the health and safety of its children. The act mandates that certain persons, including teachers and administrators of private schools report known or suspected child abuse. The compelling state interest furthered by the act justifies the interference with appellants' religious practices when appellants are acting in the capacity of child care custodians within the meaning of the statute.

Thus, we find there was substantial evidence to support appellants' convictions. We also hold the statute, under the facts of this case, does not violate any of appellants' constitutional freedoms or rights.

For these reasons, the judgment of the lower court is hereby affirmed.

Tobin, J., and Murphy J., concurred. *35

Cal.Super.App.,1992.

People v. Hodges

END OF DOCUMENT

THE PEOPLE, Plaintiff and Appellant,
v.
LLOYD GEORGE McKINNON et al., Defendants and Respondents
Crim. No. 15379.

Supreme Court of California
September 13, 1972.

SUMMARY

In a prosecution for transporting marijuana and possession of marijuana for sale, the trial court granted defendants' motion to suppress the evidence. It dismissed the charges as to one defendant and set aside the information as to the other. One of the defendants had brought five cartons to an airline freight counter for shipment, describing the contents as personal effects, and the other defendant had assisted in providing the information entered on the air bill. The employee who received the shipment suspected that it contained contraband and secured his supervisor's permission to open one of the cartons for inspection. Upon finding that it contained what he believed to be marijuana, he left the carton and a package he had removed therefrom open and telephoned the police. An experienced state narcotics officer responded to the call, looked at the packages in the carton, and formed the opinion they contained marijuana. He opened one of the packages and verified its contents. At defendants' preliminary examination, the magistrate, after hearing evidence as to the airline employee's prior contacts with police, made a specific finding of fact that he was not acting as an agent of the police when he opened the carton in question. The matter was submitted to the trial court on the transcript of the preliminary examination. (Superior Court of San Diego County, No. CR-16929, Robert O. Staniforth, Judge.)

The Supreme Court reversed the orders of the trial court. On the basis of a recent United States Supreme Court decision, the court held that a chattel consigned to a common carrier for shipment may lawfully be searched upon probable cause to believe it contains contraband, and that its prior decisions to the contrary are no longer the law. The court's prior decisions had been based on the general rule that probable cause to believe contraband will be found concealed in certain property does not justify a search without a warrant that is neither consensual nor incident to a lawful arrest, absent an emergency. In declining to follow its former rule, the court reasoned that chattels consigned to a common carrier are no less moveable than vehicles and that they are therefore subject to the same exception to the general rule. Taking the view that no probable cause on the part of an airline employee is necessary to justify his opening of a package unless he is chargeable with acting as a police agent, the court concluded that the evidence fully supported the magistrate's finding that the employee in question was acting as a private individual when he opened the carton. It further held that the record contained ample evidence to support a finding that the narcotics officer, on the basis of his experience and his observations of the packages exposed by the employee, had probable cause to search the shipment.

In Bank. (Opinion by Mosk, J., with Wright, C. J., McComb and Burke, JJ., concurring. Separate dissenting opinion by Peters, J., with Tobriner, J., concurring. Separate dissenting opinion by Sullivan, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Searches and Seizures § 19--Without Warrant--Probable Cause to Believe Contraband Present.
The rule permitting searches of automobiles and other conveyances without a warrant if there is probable cause to believe the vehicle contains articles that the searching officers are entitled to seize also applies to goods or chattels consigned to a common carrier for shipment. Thus, when the police have probable cause to believe a chattel consigned to a common carrier contains contraband, they are entitled either to search it without a warrant or to "seize" and hold it until they can obtain a warrant. There is no constitutional difference between those alternatives and either course is reasonable under the Fourth Amendment. (Stating that the rule of *People v. McGrew*, 1 Cal.3d 804 [82 Cal.Rptr. 473, 462 P.2d 1] and *Abt v. Superior Court*, 1 Cal.3d 418 [82 Cal.Rptr. 481, 462 P.2d 10] to the contrary is no longer to be followed.)
[See **Cal.Jur.2d,** Searches and Seizures, § 32.]

(2) Courts § 98--Decisions as Precedents--Decision by Divided Court as Controlling.
The judgment of an equally divided United States Supreme Court is without force as precedent.

(3a, 3b) Searches and Seizures § 5--Constitutional Provisions--Scope of Operation--Private Individuals.
The evidence at a preliminary examination on charges of transporting marijuana and possession for sale supported the magistrate's finding that an airline employee was acting as a private individual in opening a carton, later seized by a police officer, that had been consigned to the airline as a common carrier for shipment, where, though the employee had previously been requested by police to be alert for and report suspicious persons or packages, and he admitted to a practice of leaving open any package containing suspected contraband for police inspection, he was not participating in a police instigated exploratory search in opening the carton, but opened and inspected it on his own initiative and, believing it contained marijuana, justifiably showed the contents to law enforcement personnel.

(4) Searches and Seizures § 5--Constitutional Provisions--Scope of Operation--Private Individuals.
The conduct of a person not acting under the authority of a state is not proscribed by the Fourth or Fourteenth Amendments of the federal Constitution, and there are no state standards for "search and seizure" by a private citizen who is not acting as an agent of the state or other governmental unit. Therefore, acquisition of property by a private citizen from another person cannot be deemed reasonable or unreasonable within the meaning of the constitutional provisions.

(5) Searches and Seizures § 5--Constitutional Provisions--Scope of Operation--Common Carriers.
Under current tariff provisions, a common carrier to whom goods have been consigned in a sealed package is authorized to open and inspect the package if it suspects that the nature or value of the contents does not correspond to the representations of the shipper. Pursuant to its general duty of care towards all the goods it transports, it also has the right to open and inspect a package which it suspects contains a dangerous device or substance that may damage other goods in the shipment or the vehicle carrying them, and, because it has the right and the duty not to knowingly allow its property to be used for criminal purposes, it has the additional right to open and inspect a package which it suspects contains contraband.

(6a, 6b) Searches and Seizures § 19--Without Warrant--Probable Cause to Believe Contraband Present.
A police officer's search of cartons consigned to an airline for shipment was constitutionally reasonable, and the evidence discovered thereby was admissable in a prosecution for marijuana offenses, where one of the cartons had been opened by an airline employee acting as a private individual, where the officer was well versed in the detection and identification of illegal narcotics, where he testified that upon walking up to the carton opened by the employee, he observed brickshaped packages inside it and smelled a distinctive odor emanating therefrom, and where he immediately recognized the size, shape, and packaging of the bricks to be typical of those used to transport "kilo" quantities of marijuana, and further recognized the odor to be that of marijuana. Under such circumstances, a prudent man of the officer's training and experience could reasonably believe the packages contained contraband, and he thus had probable cause to search the packages before him and the remaining cartons in the shipment.

(7) Searches and Seizures § 19--Without Warrant--Probable Cause to Believe Contraband Present.
Reasonable grounds for believing a package contains contraband may be adequately afforded by its shape, its design, and the manner in which it is carried, and the same is true of an odor which the package may emit.

COUNSEL

Edwin L. Miller, Jr., and James Don Keller, District Attorneys, Richard H. Bein and Terry J. Knoepp, Deputy District Attorneys, for Plaintiff and Appellant.

Hecsh, Hegner & Philbin, Michael S. Hegner, Woolley, Crake, Collins & Ward and William O. Ward III for Defendants and Respondents.

MOSK, J.

In this typical air freight search case we are called upon to reconsider *People v. McGrew* (1969) 1 Cal.3d 404 [82 Cal.Rptr. 473, 462 P.2d 1], and *Abt v.*

Superior Court (1969) 1 Cal.3d 418 [82 Cal.Rptr. 481, 462 P.2d 10], in the light of supervening developments in the law. As will appear, we conclude that the rule of those decisions is no longer to be followed, and that a chattel consigned to a common carrier for shipment ***903** may lawfully be searched upon probable cause to believe it contains contraband.

Defendants Lloyd George McKinnon and John Scott Turk were charged with transporting marijuana (Health & Saf. Code, § 11531) and possession of marijuana for sale (Health & Saf. Code, § 11530.5). Both defendants filed motions to suppress the evidence on the ground of illegal search and seizure. (Pen. Code, § 1538.5.)The court granted the motions, dismissed the charges as to McKinnon (Pen. Code, § 1385), and set aside the information as to Turk (Pen. Code, § 995). The People appeal. (Pen. Code, § 1238, subds. (a)(1) and (a)(7).)

The matter was submitted on the transcript of the preliminary examination. Mitchell Gos, an air freight agent, testified that on March 10, 1969, McKinnon and Turk brought five cardboard cartons to the United Airlines freight counter at the San Diego airport. McKinnon stated he wished to ship the cartons to Seattle; he described the contents as "personal effects," and gave the name "L. McKinnon" of "Balboa Supply Company" as the consignor and "L. McKinnon" as the consignee. Turk assisted in providing the information entered on the air bill.

Gos had not seen either man before, but suspected that the cartons contained contraband. After defendants left, Gos asked a fellow employee to note the make and license number of their car. He then obtained his supervisor's permission to open one of the cartons for purposes of inspection. In the presence of the supervisor and other employees, Gos slit the tape on one of the cartons and put his hand inside. Beneath some paper he felt brick-shaped packages of what seemed to be soft tobacco or grass. He then lifted the lid of the carton, took out one of the packages, and pinched it open. Upon finding that it contained what he believed to be marijuana, he telephoned the police.

In response to the call, Officer McLaughlin of the State Bureau of Narcotics Enforcement arrived at the air freight counter 20 or 30 minutes later. He looked at the air bill, then entered a back room where the cartons had been placed. The carton that Gos had inspected stood open on the floor; it contained a large brown plastic bag, which was also open. As Officer McLaughlin approached the carton, he saw inside a number of brick-shaped packages wrapped in red cellophane. Each was 10 to 12 inches long, about 6 inches wide, and 2 to 3 inches thick. Officer McLaughlin formed the opinion that the substance in the packages was marijuana. He proceeded to open one of the packages, and verified its contents.

Officer McLaughlin next learned that a passenger by the name of "L. McKinnon" had a reservation on a flight due to leave for Seattle within ***904** the hour. He obtained from Gos a description of the two men who had presented the cartons for shipment, together with the make and license number of their car. Shortly afterward Officer McLaughlin located the car in the parking lot, and arrested Turk as he entered it. The officer then returned to the departure area and arrested McKinnon on board a United Airlines flight waiting to take off for Seattle.

Promptly after making the arrests Officer McLaughlin opened the remaining four cartons. Each contained, like the first, 10 identical "kilo" bricks of marijuana, making a total of 50. The parties stipulated at the hearing that this constituted a "commercial quantity" of marijuana.

The defense was directed primarily to establishing the proposition that Gos was acting as an agent of the police when he opened the first carton presented by defendants. Gos testified that on four or five occasions during the preceding three years he had opened packages consigned for shipment as air freight and had found marijuana, and in that connection had called Officer McLaughlin or other law enforcement personnel. He denied, however, that the police had instructed him to open such packages. He explained that by virtue of a regulation of the Civil Aeronautics Board he was entitled to open any shipment for purposes of inspection, and that he does so, among other reasons, to forestall fraudulent insurance claims. [FN1]His only instructions were from his company, directing him to obtain his supervisor's permission before opening a package; after that, it was company policy to notify the police if anything suspicious was found.

> FN1 Thus Gos testified, "I get all kinds of people coming over that counter and I am kept busy and people tell me they are sending electronic equipment and claim big insurance ... and it is all personal effects just to get insurance. This happens all the time, ..."

Gos further testified that it was his practice, if he found contraband in a package, to leave the package open so that when the police arrive "there is no cause for illegal search or seizure." He again denied he had been instructed to do so by the police. Instead, he explained that in a case three years earlier he had obtained police assistance in opening for inspection a pair of trunks secured by combination locks. Called to testify in that case, he learned that contraband found in the trunks was inadmissible because of the police participation in opening them. He discussed this and similar rulings with his fellow employees, and thereafter made it his practice simply to leave open any package that he found upon inspection to contain contraband.

Officer McLaughlin took the stand and acknowledged he had talked on various occasions with Gos and other airline employees, but denied ***905** ever having instructed them to open any packages or to leave them open for police examination. He testified his sole request to such employees was that they promptly contact him or some other law enforcement agency if they became suspicious of any person shipping goods or of the goods themselves.

The sole defense witness was Etta Durden, a legal secretary. At defense counsel's instigation Miss Durden had interviewed Gos a few days before the hearing, posing as a student doing research for a paper allegedly on the subject of preventing the transportation of marijuana. She testified that Gos told her the police had asked him and his fellow freight agents to "be alert" for suspicious persons or packages, and if their suspicions were aroused "they open the box and if there is any contraband in it, they leave it open and call the police." According to Miss Durden, Gos explained that such suspicions may be caused by unusual appearance or conduct of the individual, a distinctive odor emanating from the package, or a discrepancy between the weight of the package and the weight it would have if it contained the articles claimed. Finally, Miss Durden testified Gos also told her that on a few occasions the police asked him to be on the lookout for particular named individuals.

After detailed arguments on the point, the court at the preliminary hearing made a specific finding of fact that Gos was not acting as an agent of the police when he opened the carton in question. [FN2]

> FN2 The court stated, "I am not satisfied he is an agent. I haven't heard any evidence here setting forth that he did it at the direction of the Police Department or any law enforcement agent. I listened very carefully for that and I listened to what he had to say and what the young woman had to say and I can't find that he is an agent of any law enforcement agency."

I

(1)Inasmuch as Officer McLaughlin proceeded without benefit of a search warrant, the burden was on the prosecution to show proper justification for the search. (*Badillo v. Superior Court* (1956) 46 Cal.2d 269, 272 [294 P.2d 23].)

The record discloses that the various rulings of the courts below were directly responsive to the progress of an appeal in a closely similar case, *People v. McGrew*.There the defendant brought a new footlocker to the United Airlines freight counter at the San Diego airport, to be shipped to San Francisco. The employee on duty, one Dowling, became suspicious because of McGrew's general appearance and the apparently exceptional weight of the locker, which McGrew declared contained books and clothing.***906** At the direction of his supervisor, Dowling opened the locker by knocking out the hinge pins. Inside, he observed several bricks or packages wrapped in brown paper or newspaper. He closed the lid and called the police. When an officer arrived, Dowling reopened the locker and showed him the contents. The officer inspected one of the packages, and a narcotics agent decided they contained marijuana. The police then removed all but one package, replacing them with ballast.

Dowling notified other airlines about McGrew and his shipment. A few hours later McGrew brought a second footlocker to the Western Airlines freight counter, saying it contained books and dishes. The Western employees alerted the police, and the same

narcotics agent responded. Although the locker had not been opened, by compressing the lid the agent detected an odor of marijuana. At his request, the airline employees then opened the locker by knocking out the hinge pins. The contents were bricks of marijuana wrapped in brown paper. McGrew was arrested some two hours later in the airport restaurant; a suitcase he had checked was also found to contain marijuana.

The trial court granted McGrew's motion to suppress the evidence on the ground of illegal search and seizure, and dismissed the charges. On the People's appeal the Court of Appeal held the evidence admissible, and reversed. (*People v. McGrew* (Cal.App. 1969) 75 Cal.Rptr. 378.)

In the case at bar, the magistrate at the preliminary hearing relied on the Court of Appeal decision in *McGrew* in overruling defendants' objections to the admission of the marijuana evidence.

We subsequently granted a hearing in *McGrew*, and contrary to the Court of Appeal decision, affirmed the order of dismissal. (*People v. McGrew* (1969) *supra*, 1 Cal.3d 404.) In an opinion by a sharply divided court, the majority held that the search of the footlockers did not fall within any of the doctrinal exceptions to the warrant requirement of the Fourth Amendment. A similar ruling was made in the companion case of *Abt v. Superior Court* (1969) *supra*, 1 Cal.3d 418.

In the case at bar, defendants' pretrial motions to suppress came on for hearing shortly after the decisions of this court in *McGrew* and *Abt*.The deputy district attorney candidly advised the court that the facts were "quite similar" to those of *McGrew*, and submitted the matter without attempting to distinguish that authority. The court agreed the case was governed by the rule of *McGrew* and *Abt*.Observing that "I am controlled by the law as it is, not as it was or will be," the court with apparent reluctance ruled that the evidence must be suppressed. ***907**

While this case was pending on appeal, however, the United States Supreme Court rendered its decision in *Chambers v. Maroney* (1970) 399 U.S. 42 [26 L.Ed.2d 419, 90 S.Ct. 1975]. As we shall explain, we conclude that under the rationale of *Chambers* the evidence here challenged was the product of a constitutionally reasonable search.

The basis of the majority's holding in *McGrew* was the general rule that probable cause to believe contraband will be found concealed in certain property does not justify a warrantless search that is neither consensual nor incident to a lawful arrest, "absent an emergency." (1 Cal.3d at p. 409.) Such an emergency arises when there is an imminent danger that the property to be searched may be removed or the contraband destroyed. (*Ibid.*) The majority held that exception inapplicable to the facts of *McGrew*, reasoning (at p. 410) there was no "likelihood that the lockers would be removed or the contraband destroyed; both footlockers were safely in the custody of the airlines. Both footlockers had been shipped on a 'space available' basis, so that the airlines were not even under a contractual obligation to ship the footlockers before a warrant could be obtained." As the officers had time to procure such a warrant but did not do so, the majority concluded, their search of the lockers was ipso facto "unreasonable" within the meaning of the Fourth Amendment.

In *Chambers v. Maroney*, however, the United States Supreme Court rejected that same line of reasoning in the context of an automobile search. There a service station was robbed by two armed men, and eyewitness descriptions of their appearance and the getaway car were broadcast over police radio. Within an hour the robbers' vehicle was stopped on the highway by the police. The occupants were arrested, but the car was not searched at the scene. Instead, it was driven to the police station, where a later search revealed weapons and incriminating evidence hidden under the dashboard.

Affirming a denial of federal habeas corpus after convictions of robbery, the United States Supreme Court held (1) that the police had probable cause to arrest the defendants for robbery, (2) that the search of the defendants' car cannot be justified as an incident to that arrest because it was conducted at a different time and place, but (3) that the search was nevertheless reasonable because of the distinguishing characteristic of mobility possessed by the property in question, an automobile. The court began by observing (399 U.S. at p. 48 [26 L.Ed.2d at p. 426]) that "In terms of the circumstances justifying a warrantless search, the Court has long distinguished between an automobile and a home or office." The

court referred at length to its leading decision of *Carroll v. United States* (1925) 267 U.S. 132 [69 L.Ed. 543, 45 S.Ct. 280], in which it held that because of their ***908** highly movable nature "automobiles and other conveyances may be searched without a warrant in circumstances that would not justify the search without a warrant of a house or an office, provided that there is probable cause to believe that the car contains articles that the officers are entitled to seize." (399 U.S. at p. 48 [26 L.Ed.2d at p. 426].)

After emphasizing that *Carroll* remains living law today, the *Chambers* court faced the question whether a different result was required in the case before it because the officers searched the defendants' car not at the time and place it was stopped but later at the police station. The distinction was held to be without constitutional significance: "Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably, only the 'lesser' intrusion is permissible until the magistrate authorizes the 'greater.' But which is the 'greater' and which the 'lesser' intrusion is itself a debatable question and the answer may depend on a variety of circumstances. *For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant.* Given probable cause to search, either course is reasonable under the Fourth Amendment... The probable-cause factor still obtained at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured. In that event *there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained.*" (Italics added; fn. omitted.) (*Id.* at pp. 51-52 [26 L.Ed.2d at pp. 428-429].)

In the case at bar we must determine whether the rationale of *Chambers* should be limited to searches of automobiles and similar self-propelled "vehicles" such as trucks, trains, boats, or airplanes. Neither reason nor precedent compels such a narrow, mechanistic reading of *Chambers* and its predecessors. *Carroll* itself was based in part on the historical example of warrantless seizures of contraband "goods in the course of transportation." (267 U.S. at p. 149 [69 L.Ed. at p. 549].) After a detailed review of the early statutes on the subject, the court concluded (at p. 151 [69 L.Ed. at p. 550]) that "contemporaneously with the adoption of the Fourth Amendment we find in the first Congress, and in the following Second and Fourth Congresses, a difference made as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation and concealed in a movable vessel where they readily could be put out of ***909** reach of a search warrant." Even more broadly, the court said in *Preston v. United States* (1964) 376 U.S. 364, 366 [11 L.Ed.2d 777, 780, 84 S.Ct. 881], that "Common sense dictates, of course, that questions involving searches of motorcars or *other things readily moved* cannot be treated as identical to questions arising out of searches of fixed structures like houses." (Italics added.) And in *Cooper* v. *California* (1967) 386 U.S. 58, 59 [17 L.Ed.2d 730, 732, 87 S.Ct. 788], the court cited *Preston* for the proposition that because cars are "constantly movable" they may be searched with probable cause but without a warrant "although the result might be the opposite in a search of a home, a store, or *other fixed piece of property.*" (Italics added.)

Is a box or trunk consigned to a common carrier for shipment to a remote destination a "thing readily moved" or a "fixed piece of property"? The answer, self-evidently, is the former. To be sure, such a box has neither wheels nor motive power; but these features of an automobile are legally relevant only insofar as they make it movable despite its dimensions. A box, which is a fraction of the size and weight of an automobile, is movable without such appurtenances. It is also true that a box or trunk, as distinguished from an automobile, may serve the double purpose of both storing goods and packaging them for shipment. But whenever such a box is consigned to a common carrier, there can be no doubt that it is intended, in fact, to be moved.

What is true of a box or trunk is true of all goods or chattels consigned to a common carrier for shipment. As they are no less movable than an automobile, the reasons for the rule permitting a warrantless search of a vehicle upon probable cause are equally applicable to the search of such a chattel. [FN3]In the language of the United States Supreme Court decisions, "common sense dictates" that when the police have probable

cause to believe a chattel consigned to a common carrier contains contraband, they must be entitled either (1) to search it without a warrant or (2) to "seize" and hold it until they can obtain a warrant; absent these remedies, the chattel will be shipped out of the jurisdiction or claimed by its owner or by the consignee.*Chambers* teaches us, however, that in those circumstances there is no "constitutional difference" between the alternatives thus facing the police: an immediate search without a warrant, says the *Chambers* court, is no greater an intrusion on the rights of the owner than immobilization of the chattel until a warrant is obtained, and "either ***910** course is reasonable under the Fourth Amendment."

> FN3 This rule does not apply to first class mail, which has historically been accorded special treatment by the United States Supreme Court. (See, e.g., *United States v. Van Leeuwen* (1970) 397 U.S. 249, 251-252 25 L.Ed.2d 282, 284-285, [90 S.Ct. 1029].) (399 U.S. at p. 52 [26 L.Ed.2d at p. 428].)

Finally, contrary to the reasoning of the majority of this court in *McGrew* (at p. 410 of 1 Cal.3d), we learn from *Chambers* there is no constitutional relevance to the fact that a chattel consigned to a common carrier - such as the cartons in the case at bar - is temporarily entrusted to the "custody" of the carrier. In *Chambers* the defendants' automobile was seized by police officers and impounded at the police station; if the high court can say, as it does, that under those circumstances "the mobility of the car" still obtained *at the station house* (399 U.S. at p. 52 [26 L.Ed.2d at p. 428]), a fortiori a chattel such as here involved remains "mobile" in the constitutional sense despite its limited and voluntary bailment to a common carrier.

Fairly construed, the reasoning of the United States Supreme Court in *Chambers* thus undermines the foundation of the majority opinions in *McGrew* and *Abt*.(Accord, *People v. Superior Court (Evans)* (1970) 11 Cal.App.3d 887, 893 [90 Cal.Rptr. 123].) For these reasons, *McGrew* and *Abt* are no longer to be followed.

We are not unmindful of the recent decision of the United States Supreme Court in *Coolidge v. New Hampshire* (1971) 403 U.S. 443 [29 L.Ed.2d 564, 91 S.Ct. 2022]; properly considered, however, we do not interpret that decision to affect the impact of *Carroll* and *Chambers* on *McGrew* and *Abt*.

First, *Coolidge* is distinguishable on its facts. After arresting a murder suspect in his house, the police seized his automobile and searched it later at the police station, finding physical evidence that the victim had been inside the vehicle. Rejecting a contention that there were "exigent circumstances" to justify the search and seizure without a valid warrant, the plurality opinion of Justice Stewart emphasized the following facts: "In this case, the police had known for some time of the probable role of the Pontiac car in the crime. Coolidge was aware that he was a suspect in the Mason murder, but he had been extremely cooperative throughout the investigation, and there was no indication that he meant to flee. He had already had ample opportunity to destroy any evidence he thought incriminating. There is no suggestion that, on the night in question, the car was being used for any illegal purpose, and it was regularly parked in the driveway of his house. The opportunity for search was thus hardly 'fleeting.' The objects that the police are assumed to have had probable cause to search for in the car were neither stolen nor contraband nor dangerous." (*Id.* at p. 460 [29 L.Ed.2d at p. 579].)***911**

Here, in sharp contrast, law enforcement authorities had not "known for some time" of the existence or probable contents of the five cartons presented by defendants for shipment; although defendants were not deliberately fleeing, both were departing from the premises and one was already on board an airplane preparing to fly out of the jurisdiction; the cartons were not resting on private property, but had been consigned to a common carrier for transportation to a remote destination; and there was probable cause to believe (see Part III, *post*) that the cartons were being "used for an illegal purpose" in that they contained not "mere evidence" but contraband. Each of these factors was specifically found to be lacking in *Coolidge*; measured by the high court's own standards, therefore, the opportunity to search in the case at bar was much more "fleeting" - and prompt action was far more imperative - than in *Coolidge*.

Second, that portion of Justice Stewart's plurality opinion (Part II B, 403 U.S. at pp. 458-464 [29 L.Ed.2d at pp. 578-581]) which purports to narrow the *Carroll-Chambers* rule was in any event signed by only four members of the court (Stewart, J., Doug-

las, J., Brennan, J., and Marshall, J.). Although concurring in the judgment, Justice Harlan declined to join in Part II B of the opinion (see *id.* at p. 491 [29 L.Ed.2d at p. 597]), and the four remaining justices expressly disagreed with Justice Stewart on this point (*id.* at p. 504 [29 L.Ed.2d at p. 605], dissenting opn. by Black, J., joined by Burger, C.J., and Blackmun, J.; *id.* at p. 525 [29 L.Ed.2d at p. 617], dissenting opn. by White, J., joined by Burger, C.J.). It follows that the *Carroll-Chambers* issue raised by the plurality opinion in *Coolidge* was in fact considered by an equally divided court, and hence was not actually *decided*: under settled doctrine, the judgment of an equally divided United States Supreme Court "is without force as precedent." (*Eaton v. Price* (1960) 364 U.S. 263, 264 [4 L.Ed.2d 1708, 1709, 80 S.Ct. 1463].) Thus we are bound to apply the *Carroll-Chambers* rule according to our present understanding of its scope.

II

(3a)Turning to the facts of the case before us, we find it undisputed that the carton opened by Gos was a chattel consigned to a common carrier for shipment. The dispositive question, therefore, is whether there was probable cause to believe the carton contained contraband.

To begin with, it is not necessary that the airline employee himself have such probable cause unless he is chargeable with acting as a police agent in opening the shipment. (4) "The conduct of a person not acting ***912** under the authority of a state is not proscribed by the Fourth or Fourteenth Amendments of the federal Constitution. There are no state standards for 'search and seizure' by a private citizen who is not acting as an agent of the state or other governmental unit. Therefore, acquisition of property by a private citizen from another person cannot be deemed reasonable or unreasonable" within the meaning of the constitutional provisions. (*People v. Superior Court (Smith)* (1969) 70 Cal.2d 123, 128-129 [74 Cal.Rptr. 294, 449 P.2d 230], and cases cited.) Whether an airline employee acts as an agent of the police is, of course, a question of fact, but some guidelines have emerged from the reported decisions in related cases. FN4

FN4 This question was expressly left open in both *McGrew* (1 Cal.3d at p. 409) and *Abt*(*id.* at p. 421). The analysis we now adopt requires that it be reached and resolved.

First, it is evident that the conduct of an airline employee who was hired and paid by the police to search any and all suspicious packages in the hope of finding evidence of crime would be judged by Fourth Amendment standards. (*People v. Tarantino* (1955) 45 Cal.2d 590, 595 [290 P.2d 505].) The same would be true of the conduct of an airline employee who, although not in the actual hire of the police, nevertheless participated in planning and implementing a "joint operation" with law enforcement authorities for the purpose of obtaining incriminating evidence against a specific person. (*Stapleton v. Superior Court* (1968) 70 Cal.2d 97, 100-102 [73 Cal.Rptr. 575, 447 P.2d 967].) And even though he had no prior arrangement with the police, an airline employee would be deemed to act as an agent thereof if he were to open and search a specific package at the express direction or request of law enforcement authorities. (*People v. Fierro* (1965) 236 Cal.App.2d 344, 347 [46 Cal. Rptr. 132].) None of these situations, however, is presented in the case at bar.

An alternate ground of our holding in *Stapleton* was that in appropriate circumstances a private citizen may also be deemed to act as an agent of the police when the latter merely "stand silently by," i.e., when they knowingly permit the citizen to conduct an illegal search for their benefit and make no effort to protect the rights of the person being searched. (70 Cal.2d at pp. 102-103.) This rule forestalls belated police claims that they did not actually "direct" or "request" their lay associate to undertake the illegal search, and thereby prevents them from doing indirectly - by silent but unmistakable approval - what they cannot constitutionally do directly.

In the peculiar context of searches by airlines or other common carriers, ***913** however, the foregoing rule would appear to have little if any application. First, it is obvious that the rule cannot be invoked unless the police have both actual knowledge of the search and the opportunity to prevent it. These requirements are met when the police are literally "standing by" while a search takes place in their presence. For example, in both *Stapleton* and the case on which it relies (*Moody v. United States* (D.C.Mun. App. 1960) 163 A.2d 337) the search was the outcome of a joint civil-

ian-police operation directed against a specific individual, and the police were physically present throughout the significant events. Thus they knew of the search and could have intervened to stop it. By contrast, a common carrier ordinarily conducts its investigations on a random basis whenever a suspicious package is presented for shipment, on the initiative of the employees involved and before law enforcement authorities are called to the scene. The requisite elements of police knowledge and opportunity to intervene are therefore lacking. For the same reason, they are lacking in the case at bar.

A further prerequisite to invoking the *Stapleton-Moody* rule is, manifestly, that the search permitted by the police be illegal. For example, without any color of authority the private party in *Moody* searched the defendant's apartment (cf. *Chapman v. United States* (1961) 365 U.S. 610, 613 [5 L.Ed.2d 828, 831, 81 S.Ct. 776]), and in *Stapleton* searched the locked trunk of the defendant's parked automobile (cf. *Preston v. United States* (1964) *supra*, 376 U.S. 364, 366-367 [11 L.Ed.2d 777, 779-781]). But a common carrier, as we shall see, ordinarily has independent and reasonable grounds to inspect packages committed to its custody.

(5)When a shipper consigns goods in a sealed package to a common carrier, such matters as rates, insurance values, and methods of handling are customarily determined by the carrier on the basis of the shipper's representations as to the contents of the package. Contrary to early case law on the point (*Hayes v. Wells, Fargo & Co.* (1863) 23 Cal. 185, 189-190), current tariff provisions under which regulated carriers operate in California authorize the carrier to open and inspect the package if it suspects that the nature or value of the contents does not correspond to those representations.

Further, because a common carrier has a general duty of care towards all the goods it transports, it also has the right to open and inspect a package which it suspects contains a dangerous device or substance which may damage other goods in the shipment or the vehicle carrying them. (13 Am.Jur.2d, Carriers, § 238, and cases cited.) ***914**

Finally, a common carrier, no less than any other citizen, has the right, indeed the duty, not to knowingly allow its property to be used for criminal purposes. [FN5]While a carrier is bound to accept whatever freight it holds itself out as accustomed to carry (Civ. Code, § 2169), it is obviously not bound to accept freight which it is illegal to possess or transport (see Health & Saf. Code, §§ 11530 [possession of marijuana], 11531 [transportation of marijuana]). Although such freight may not present a physical hazard to other goods or the vehicle carrying them, the carrier is not required to risk the injury to its reputation and business which could well ensue from public knowledge that it permits its facilities to be used by criminals for the purpose of trafficking in narcotics. Accordingly, the carrier has the additional right to open and inspect a package which it suspects contains contraband. (3b) This is precisely the basis upon which Gos acted in the case at bar.

> FN5 Thus in *People v. Botts* (1967) 250 Cal.App.2d 478, 481-483 [58 Cal.Rptr. 412], it was held that a service station attendant who spied on two men using his restroom for illegal narcotics activities was not acting as an agent of the police and his conduct was not to be judged by Fourth Amendment standards. (Compare *Bielicki v. Superior Court* (1962) 57 Cal.2d 602 [21 Cal.Rptr. 552, 371 P.2d 288].)

We have not overlooked the testimony indicating the police had previously asked Gos and his fellow employees to "be alert" for suspicious persons or packages and to contact the authorities if they should see any. But such a request, whether communicated orally or by means of bulletins or circulars (e.g., *People v. Temple* (1969) 276 Cal.App.2d 402, 408 [80 Cal.Rptr. 885]), does not ipso facto create a police agency relationship. Substantial numbers of citizens are deeply concerned about the problem of crime in our society, particularly the dangers posed by the narcotics traffic. By the very nature of their work, employees of common carriers are especially likely to come into contact with that traffic. When the authorities respond to such public interest with drug education programs and generalized appeals for the assistance of the citizenry, [FN6] they do not automatically "deputize" all those who may have occasion to act on the information thus provided: "There is, certainly, a line to be drawn between joining the police in a specific investigation already launched ***915** by them and making a simple response to a general request for cooperation in detecting crime, a badge of

good citizenship." (*Ibid.*) [FN7]

FN6 As concluded by the President's Commission on Law Enforcement and Administration of Justice: "That every American should cooperate fully with officers of justice is obvious ... [T]he complexity and anonymity of modern urban life, the existence of professional police forces and other institutions whose official duty it is to deal with crime, must not disguise the need - far greater today than in the village societies of the past - for citizens to report all crimes or suspicious incidents immediately; to cooperate with police investigations of crime; in short, to 'get involved.'" (The Challenge of Crime in a Free Society, Report by the President's Commission on Law Enforcement and Administration of Justice (1967) p. 288.)

FN7 Nor does an agency relationship arise merely because, as asserted in the case at bar, the police from time to time may ask airline employees to be on the lookout for particular named individuals and to contact the authorities if they are observed. That sort of cooperation is also the sole purpose of the "wanted" posters displayed in all our post offices; yet a citizen who sees such a poster is not thereby transformed into an FBI agent should he later recognize the suspect and either question or detain him.

By the same token we perceive no sinister significance in Gos' practice, which he freely admitted, of leaving open any package which he found to contain a substance he believed to be contraband. An employee of a common carrier who exercises his right to open and inspect a package suspected to contain contraband will, of course, close and reseal that package if his suspicions prove unfounded. It is a non sequitur to require him to do the same when the package does contain apparent contraband. On the contrary, he is entitled at that point to have his suspicions confirmed by persons experienced in identifying narcotics, and who can take appropriate measures if the substance is in fact illegal.

Thus in *People v. Lanthier* (1971) 5 Cal.3d 751, 757-758 [97 Cal.Rptr. 297, 488 P.2d 625], a university maintenance man opened a student's briefcase while investigating a noxious odor emanating from a locker; he suspected the contents were marijuana, and the briefcase was turned over to the police for examination. Relying on *McGrew* and *Abt* the student contended that even if it was reasonable for the maintenance man to open the briefcase, he closed it after doing so and its contents were therefore no longer "in plain sight" when the police arrived. Upholding the admissibility of the marijuana thus seized, we said in a unanimous opinion: "In their effort to identify the contents of defendant's briefcase, ... it was reasonable for the university officials to secure professional advice by enlisting the aid of campus and local police. A single consultation by such officials with a police expert on narcotics falls far short, for example, of a general police-instigated exploratory search of student housing or belongings in the hope of turning up contraband. Rather, the officials' conduct in the case at bar is analogous to that of 'the landlord or bailee who innocently discovers the suspicious circumstances, and seeks expert advice as to the nature of the use to which his premises or facilities are being appropriated. The latter would be no more than an extension of the plain-sight rule, by augmenting the observations of the layman with the expertise of the police.' (*People v. Baker* (1970) 12 Cal.App.3d 826, 838 [96 Cal.Rptr. 760].)***916**

"Viewed in this light, the question of who opened or closed defendant's briefcase pales into insignificance." (Fn. omitted.)

Here, too, there was no "general police-instigated exploratory search." Rather, as in *Lanthier*, an employee acting on his own initiative opened and inspected a specific container on his employer's premises, and believed its contents were marijuana. At that point he was entitled to show those contents to law enforcement personnel; and just as with the student briefcase in *Lanthier*, the question whether an airline employee awaiting the arrival of the police should leave open the package he has examined, or close it and then reopen it in front of the officer, "pales into insignificance." [FN8]Whichever choice is made, it cannot reach backwards in time to brand as the act of a police agent the employee's original decision to inspect the package.

FN8 Parenthetically we note that in *Lanthier* the defendant complained because the con-

tainer was not left open, while in the present case the defendants complain because it was.

We conclude that the evidence fully supports the magistrate's finding of fact that Gos was acting as a private individual when he opened the package here in issue. For the reasons stated, therefore, it was not necessary that in so doing he have probable cause to believe it contained contraband.

III

(6a)Officer McLaughlin, of course, was required to have such probable cause, and the record contains ample evidence to support such a finding.

At the outset, it must be clearly understood that the issue which divided this court in *People v. Marshall* (1968) 69 Cal.2d 51 [69 Cal.Rptr. 585, 442 P.2d 665], is not here presented. There the majority held that because a dwelling cannot be searched on probable cause alone, a warrantless search of a package secreted in a dwelling cannot be justified under the "plain view" exception unless the officer can actually see the contents of the package. (*Id.* at p. 59.)In the case at bar, by contrast, the packages were consigned to a common carrier for shipment and hence, for the reasons stated earlier, could be searched on probable cause. Thus the issue was not whether the marijuana in the packages was in "plain view" but simply whether Officer McLaughlin had probable cause to believe they did contain that narcotic. On this point, the majority opinion in *Marshall* agreed (69 Cal.2d at p. 57, fn. 2) that "an officer may rely on ***917** all his senses" in determining the presence of such probable cause. (Accord, *People v. Temple* (1969) *supra*, 276 Cal.App.2d 402, 410-411, fn. 10.)

(7)Applying that rule, the court correctly held that "Reasonable grounds for believing a package contains contraband may be adequately afforded by its shape, its design, and the manner in which it is carried." (*People v. Anderson* (1968) 266 Cal.App.2d 125, 132-133 [71 Cal.Rptr. 827]; see also *Hernandez v. United States* (9th Cir. 1965) 353 F.2d 624, 627-628; cf. *Henry v. United States* (1959) 361 U.S. 98, 104 [4 L.Ed.2d 134, 139-140, 80 S.Ct. 168].) And the same is true of an odor which the package may emit. (*People v. Christensen* (1969) 2 Cal.App.3d 546, 548-549 [83 Cal.Rptr. 17], and cases cited.)

(6b)In the case at bar we note that Officer McLaughlin was qualified on the witness stand as being well versed in the detection and identification of illegal narcotics. He testified that upon walking up to the carton opened by Gos, he observed the brick-shaped packages inside it and smelled a distinctive odor emanating therefrom. He immediately recognized the size, shape and packaging of the bricks to be typical of those used to transport "kilo" quantities of marijuana, and further recognized the odor to be that of marijuana. In the light of all the circumstances, a prudent man of Officer McLaughlin's training and experience could reasonably believe the packages contained contraband.

Predicated on such probable cause, the officer's subsequent search of the packages before him and the remaining four cartons in the shipment was constitutionally reasonable under the rationale of *Chambers*, and the evidence discovered in that search is admissible. Therefore, the trial court's order of suppression, the dismissal of the charges against McKinnon, and the granting of Turk's motion under section 995, were in error.

The orders appealed from are reversed.

Wright, C. J., McComb, J., and Burke, J., concurred.
PETERS, J.
I dissent.

I

In *People v. McGrew*, 1 Cal.3d 404 [82 Cal.Rptr. 473, 462 P.2d 1], law enforcement officials conducted a similar search of a trunk consigned to an airline. There too the police had probable cause to believe that the trunk contained marijuana. We correctly held, in my view, that the search without a warrant was unreasonable and therefore a violation of the defendant's Fourth Amendment rights. The majority in the instant ***918** case in overruling *McGrew* have totally abrogated the Fourth Amendment requirement of a search warrant insofar as concerns goods consigned to a common carrier.

In *McGrew* we summarized Fourth Amendment principles: " *People v. Marshall*, 69 Cal.2d 51, 57 [69 Cal.Rptr. 585, 442 P.2d 665], makes clear that with

certain exceptions, probable cause to believe that 'a search will reveal contraband ... does not justify a search without a warrant.' Where there is probable cause, a warrant still must be obtained, absent an emergency, for a search not incident to a valid arrest even though a warrant would not be needed for a search incident to an arrest. (E.g., *People v. Harris*, 62 Cal.2d 681, 682-683 [43 Cal.Rptr. 833, 401 P.2d 225].)

"The exceptions to the requirement of a search warrant, aside from searches incident to an arrest, are where there is a danger of "'imminent destruction, removal, or concealment of the property intended to be seized'" or where the evidence is in plain sight, which 'is, in fact, no search for evidence.' (*People v. Marshall, supra*, 69 Cal.2d 51, 56-57, 61.)

"... The Fourth Amendment protection of 'effects' includes securely closed footlockers shipped through common carriers. Neither the language of the Fourth Amendment, nor of any of the cases interpreting the protection of that amendment, suggest that warrants apply to 'houses' but not to 'effects.' The exceptions to the requirement of a warrant are based on circumstances and not on categories of items..." (1 Cal.3d at p. 409.)

In *McGrew* the People contended, as they do here, that footlockers are movable and therefore in imminent danger of removal. This court said then that there was *no* danger of imminent removal or destruction of the evidence in circumstances like those before us. The majority should either reiterate today or forthrightly recant that statement because if it is true there are no special circumstances to justify a search without a warrant and the search was invalid.

I believe that *McGrew* is good law today. It should be; the law applied there is fundamental to our constitutional jurisprudence. The majority find no fault with our decision of three years ago. They do not quarrel with its logic or the principles upon which it relies. They rather purport to rely on the subsequent case of *Chambers* v. *Maroney*, 399 U.S. 42 [26 L.Ed.2d 419, 90 S.Ct. 1975], a vehicle case which is not controlling, while giving little or no weight to the most recent vehicular search case, *Coolidge* v. *New Hampshire*, 403 U.S. 443 [29 L.Ed.2d 564, 91 S.Ct. 2022].*919

In *Chambers*, the police arrested men they had every reason to believe were robbers fleeing from the scene of the crime. The defendants' car was taken to the police station, where it was searched without a warrant. Although the car was for practical purposes immobilized, the high court stated that its prior mobility "still obtained at the station house ... unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured. In that event there is little to choose in terms of practical consequences between an immediate search without a warrant [FN1] and the car's immobilization until a warrant is obtained..."

> FN1 Such a search would be valid pursuant to *Carroll v. United States*, 267 U.S. 132, 153 [69 L.Ed. 543, 551, 45 S.Ct. 280, 39 A.L.R. 790]. Since the car was *not* searched immediately on the highway *nor* immobilized until a warrant could be obtained, the court's statement concerning the car's continuing "mobility" clearly indicates that the search at the police station must be considered to have been "immediate." (399 U.S. 42, 52 [26 L.Ed.2d 419, 428-429].)

Mr. Justice Harlan, in dissent, ably responded to this contention: "The Fourth Amendment proscribes, to be sure, unreasonable 'seizures' as well as 'searches.' However, in the circumstances in which this problem is likely to occur, the lesser intrusion will almost always be the simple seizure of the car for the period - perhaps a day - necessary to enable the officers to obtain a search warrant... [P]ersons who wish to avoid a search - either to protect their privacy or to conceal incriminating evidence - will almost certainly prefer a brief loss of the use of the vehicle in exchange for the opportunity to have a magistrate pass upon the justification for the search. To be sure, one can conceive of instances in which the occupant ... would be more deeply offended by a temporary immobilization of his vehicle than by a prompt search of it. However, such a person always remains free to consent to an immediate search, thus avoiding any delay. Where consent is not forthcoming, the occupants of the car have an interest in privacy that is protected by the Fourth Amendment even where the circumstances justify a temporary seizure. [Citation.] ..." (399 U.S. 42, 63-64 [26 L.Ed.2d 419, 435-436].)

I believe Mr. Justice Harlan's to be the reasoned

view, but of course am bound by the result reached by the majority, a result I thought reasonably apparent after *Cooper v. California*, 386 U.S. 58 [17 L.Ed.2d 730, 87 S.Ct. 788]. (*People* v. *Webb*, 66 Cal.2d 107, 128 [56 Cal.Rptr. 902, 424 P.2d 342, 19 A.L.R.3d 708].) [FN2]***920**

> FN2 *Webb* involved almost precisely the same fact situation as that in *Chambers*.The majority sustained the search on the theory that, although removed in time and place from the arrest, it was nevertheless incident to it. I concurred only because I believed that *Cooper v. California, supra*, 386 U.S. 58, presaged the *Chambers* case. It may be noted that the majority in *Chambers* expressly held that a search so removed in time and place could *not* be construed as incident to an arrest. (399 U.S. at p. 47 [26 L.Ed.2d at p. 426].)

Chambers, however, does not purport to apply to everything that is not nailed down or affixed to realty. The Supreme Court's opinion is closely tied to a long series of cases involving one and only one form of movable object - that which is used as a vehicle to transport goods from one place to another.

Carroll v. United States, supra, 267 U.S. 132, is the seminal case upon which *Chambers* is based and the United States Supreme Court decision in which the problem is treated at length. The *Carroll* court carefully analyzed the colonial writs of assistance and contemporaneous legislation enacted by the first few Congresses, concluding that "contemporaneously with the adoption of the Fourth Amendment we find in the first Congress, and in the following Second and Fourth Congresses, a difference made as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation *and concealed in a movable vessel* where they readily could be put out of reach of a search warrant..." (267 U.S. 132, 151 [69 L.Ed. 543, 550]; italics added.)

The *Carroll* court never attempted to state a rule applicable to all movable items. Rather it sought to recognize "a necessary difference between a search of a store, dwelling house or other structure ... and a search of a *ship, motor boat, wagon* or *automobile*, for contraband goods, where it is not practicable to secure a warrant because the *vehicle* can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." (*Id.*, at p. 153 [69 L.Ed. at p. 551]; italics added.) Every United States Supreme Court case which follows *Carroll* has involved a vehicle. (*Husty v. United States*, 282 U.S. 694 [75 L.Ed. 629, 51 S.Ct. 240, 74 A.L.R. 1407]; *Scher v. United States*, 305 U.S. 251 [83 L.Ed. 151, 59 S.Ct. 174]; *Preston* v. *United States*, 376 U.S. 364 [11 L.Ed.2d 777, 84 S.Ct. 881]; *Dyke v. Taylor Implement Co.*, 391 U.S. 216 [20 L.Ed.2d 538, 88 S.Ct. 1472]; *Chambers v. Maroney, supra*, 399 U.S. 42; *Coolidge v. New Hampshire, supra*, 403 U.S. 443.)

The most recent case to address itself to the problems of a vehicular search is *Coolidge v. New Hampshire, supra*, 403 U.S. 443.The majority attempt to distinguish that case from the instant case insofar as it attempts to clarify the rule of the search without a warrant in exigent circumstances, and in the end the majority maintain that because no clear majority supported the opinion of the court in its entirety the opinion is of no significance insofar as the instant case is concerned. I disagree with both points. ***921**

In *Coolidge*, the car was parked outside the house and was not being used at the time it was seized by the police. There was no way for the defendant to gain access to the automobile once the police had arrived at his home. Furthermore, Mrs. Coolidge and her baby were also taken to other lodging where the police stayed with them for the remainder of the night. The car was towed to the police station by midnight and the Coolidge house was kept under strict guard for the entire evening.

Just as the car in *Coolidge* could not seem to be moved or hidden by any of the suspects, so too the five cartons in the instant case were unable to be moved, at least not without the police seeing their movement by the defendants and arresting them with probable cause. In both cases, the exigent circumstances that *Carroll* and *Chambers* require are nonexistent, and five justices of the Supreme Court held that in the absence of those circumstances the search of the car without a warrant could not be upheld.

The majority state that Justice Stewart's plurality opinion "was in any event signed by only four members of the court (Stewart, J., Douglas, J., Brennan, J.,

and Marshall, J.)" and for this reason "'is without force or precedent.'" What the majority do not tell us is that the fifth member of the United States Supreme Court who joined to make the majority in *Coolidge* in reversing the conviction expressly joined in part II - D of Justice Stewart's opinion and that part is directly in point here. That part of Justice Stewart's opinion was a vigorous attack and rejection on a dissenting opinion which set forth views substantially similar to those expressed by the majority in the case before us.

Justice Stewart in part II - D of his opinion expressly stated: "*Since the police knew of the presence of the automobile and planned all along to seize it, there was no 'exigent circumstance' to justify their failure to obtain a warrant. The application of the basic rule of Fourth Amendment law therefore requires that the fruits of the warrantless seizure be suppressed.*" (403 U.S. at p. 478 [29 L.Ed.2d at p. 590]; italics added.)

In part II - D Justice Stewart further maintains, "The stopping of a vehicle on the open highway and a subsequent search amount to a major interference in the lives of the occupants. *Carroll* held such an interference to be reasonable without a warrant, given probable cause. It may be thought to follow *a fortiori* that the seizure and search here - where there was no stopping and the vehicle was unoccupied - were also reasonable, since the intrusion was less substantial, although there were no exigent circumstances whatever. Using reasoning of this sort, it is but a short step to the position that it is *never* necessary for the police to obtain a warrant before searching ***922** and seizing an automobile, provided that they have probable cause. And Mr. Justice White appears to adopt exactly this view when he proposes that the Court should 'treat searches of automobiles as we do the arrest of a person.'

"If we were to accept Mr. Justice White's view that warrantless entry for purposes of arrest and warrantless seizure and search of automobiles are *per se* reasonable, so long as the police have probable cause, it would be difficult to see the basis for distinguishing searches of houses and seizures of effects. If it is reasonable for the police to make a warrantless nighttime entry for the purpose of arresting a person in his bed, then surely it must be reasonable as well to make a warrantless entry to search for and seize vital evidence of a serious crime. If the police may, without a warrant, seize and search an unoccupied vehicle parked on the owner's private property, not being used for any illegal purpose, then it is hard to see why they need a warrant to seize and search a suitcase, a trunk, a shopping bag, or any other portable container in a house, garage, or back yard." (At pp. 479-480 [29 L.Ed.2d at pp. 590-591]; italics in the original.)

And finally what could be a more clear expression of the inapplicability of the *Carroll-Chambers* rule than when Justice Stewart concludes, "We are convinced that the result reached in this case is correct, and that the principle it reflects - that the police must obtain a warrant when they intend to seize an object outside the scope of a valid search incident to arrest - can be easily understood and applied by courts and law enforcement officers alike. It is a principle that should work to protect the citizen without overburdening the police, and a principle that preserves and protects the guarantees of the Fourth Amendment." (At p. 484 [29 L.Ed.2d at p. 593].)

Thus, the five justices who reversed the conviction in *Coolidge* would not agree with the analysis of the majority in the instant case in allowing a search of the five cartons in question without a warrant.

The rule of *Carroll*, and its progeny is clear. Where the goods are in the course of transportation, i.e., in a *vehicle* capable of conveying them beyond the jurisdiction, a search without a warrant may be conducted by a law enforcement officer who has probable cause to believe that seizable goods will be found. A carton in a freight office is not a vehicle. It may be used to store goods or to package them for shipment; a carton *cannot* get from here to there on its own power.

The majority state that if the mobility of a car still obtains at the station house, "a fortiori a chattel such as here involved remains 'mobile' in the ***923** constitutional sense despite its limited and voluntary bailment to a carrier." Indeed, chattels will retain their movable character anywhere, whether within a depot, dwelling house, or concrete vault as well as an airport, unless they are affixed to realty or otherwise rendered nonmovable. The point is not that the chattels here involved were within the custody of the airlines, but that they were *not* in a vehicle capable of moving them beyond the jurisdiction on its own power; i.e., they had not entered the course of transportation. Drawing a line at goods physically aboard

a carrier at least has the virtue of certainty. This is the line drawn by the United States Supreme Court in case after case. If *all* things movable could be searched without a warrant if there were probable cause to believe they contained evidence or contraband, the Fourth Amendment would be rendered nugatory, and in effect the search without a warrant would become the rule rather than the exception.

II

With respect to the discussion of agency, I agree with the majority that there was sufficient evidence before the magistrate to establish that Gos was not the agent of the law enforcement officers. Nevertheless, there was conflicting evidence, and I do not believe that the magistrate's determination may be upheld on the record before us. It is clear from that record that the magistrate applied an improper standard in determining the agency question. As the majority recognize in footnote 2 of their opinion, the basis of the magistrate's decision was that he had heard no evidence of agency. In the case before us, the testimony of Etta Durden, if believed, established as a matter of law that Gos was acting as an agent of the police department, and the magistrate in ruling that there was no evidence was obviously applying an improper standard. Although Etta Durden's testimony might have been rejected by the magistrate, he did not do so.

Miss Durden was hired to interview airport freight agents and their role in helping law enforcement officials control narcotics transportation. She testified as a result of her conversation with Gos "that the police had asked him [Gos] to be alert for any suspicious individuals who are shipping packages and if they are suspicious, to open them and the policy was to leave the boxes open and call the State Narcotics Bureau."

The majority do not discuss the plain effect of this testimony, and their holding in today's decision should not be read as affirmatively sanctioning the practice of police officers requesting private citizens to make indiscriminate searches and seizures without even probable cause. Otherwise, the impact of this decision would allow the police to unofficially deputize a ***924** private individual, and where the police cannot search without a warrant, the private individual at the direction and suggestion of the police can, and any evidence uncovered will be fully admissible in a court of law. I submit that condoning this practice will inevitably lead to the type of society George Orwell described in his novel "1984," where an individual's private life is nonexistent and everyone is an agent of the state.

With regard to Gos' search of the cartons, I do not conclude that an airline employee, acting as an agent of the airline pursuant to a CAB regulation enacted for the protection of the airline, cannot open a box or shipment if he suspects the consignor has overinsured it as part of a plan to make a fraudulent insurance claim at a later date. If the employee is acting for the best interests of the airline and for its protection without any direction from the police, I agree with the majority that he is acting as a private individual and such a search would not make him an agent of the police.

However, the magistrate's determination was based on the premise that he had not heard any evidence of agency. This was false. There was clear evidence of agency. Although there was also conflicting evidence, the magistrate did not resolve the conflict and obviously applied an erroneous standard. In failing to consider the evidence of agency, the majority have failed to consider the real issue in this case.

III

I am distressed that this court today bulldozes new inroads through the protective covering of the Fourth Amendment. It is of course a general principle of our jurisprudence that the Bill of Rights be construed liberally to protect those rights deemed so essential to a free nation. Because the Fourth Amendment prohibits only "unreasonable" searches and seizures, rather than setting down an absolute standard of conduct, fidelity to this principle of constitutional construction is here even more important. For in Fourth Amendment cases, as distinguished from the absolute measuring rod of the First Amendment's dictates, our characterization of what is reasonable and unreasonable in each case will affect the standard used in succeeding cases. Unless exceptions to the rule that a warrant be obtained prior to search are granted only where compelling necessity requires immediate action, there is substantial danger that over time "[r]ights declared in words might be lost in reality." (*Weems v. United States*, 217 U.S. 349, 373 [54 L.Ed. 793, 801, 30 S.Ct. 544].) I fear that today's decision is only the beginning of more shocking intrusions upon

Fourth Amendmentrights.***925** I see no reason, for example, why "common sense" (to use the majority's finely honed analytical concept) should not extend the right to search without a warrant to goods within a dwelling that are so packaged that they could easily be moved, such as any goods in a paper bag or box.

The majority today take what they regard as a small step. Because of the ratio decidendi on which they rely, however, this must be only the beginning of a long journey toward a society devoid of private sanctuaries. The words of Justice Bradley, writing 85 years ago, retain their vitality today: "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis.* ..." (*Boyd v. United States*, 116 U.S. 616, 635 [29 L.Ed. 746, 752, 6 S.Ct. 524].) I would withstand this beginning; I would affirm the orders of the lower court.

Tobriner, J., concurred.

SULLIVAN, J.

I join in Parts I and III of Justice Peters' dissenting opinion. I would therefore affirm the orders appealed from. ***926**

Cal.
People v. McKinnon
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END OF DOCUMENT

THE PEOPLE, Plaintiff and Respondent, v. BRYAN TONEY, Defendant and Appellant.
Cal.App.2.Dist.

THE PEOPLE, Plaintiff and Respondent,
v.
BRYAN TONEY, Defendant and Appellant.
No. B130777.

Court of Appeal, Second District, California.
Nov. 30, 1999.

SUMMARY

A jury convicted defendant of felony child abuse (Pen. Code, § 273a, subd. (a)) and multiple narcotics offenses, and the trial court sentenced him to state prison. A search of defendant's residence had revealed a narcotics laboratory. There was also a child's bedroom that looked like it was being lived in. Defendant was married to a woman who had a six-year-old son from a previous relationship. The child lived with his grandmother, but visited his mother and defendant on weekends. (Superior Court of Los Angeles County, No. MA017174, David S. Wesley, Judge.)

The Court of Appeal affirmed the judgment. The court held that substantial evidence supported defendant's felony child abuse conviction. Pen. Code, § 273a, subd. (a), prohibits a person from willfully exposing any child in his or her care or custody to danger likely to produce great bodily harm or death. In this case, the elements of the statute were met. First, the evidence was sufficient to demonstrate defendant's willingness to assume the care or custody of the child. Defendant had married the child's mother, who moved into his home. He also invited the child into his home, gave him a room of his own, and allowed him to use an area in the living room. Second, the evidence was sufficient to show that defendant willfully exposed the child to danger that was likely to produce great bodily harm or death. Defendant's home contained extremely dangerous, highly flammable chemicals in the living room, dining room, kitchen and garage. Many were on the floor. Any reasonable person would have understood the risks posed to a child in such a setting. (Opinion by Coffee, J., with Gilbert, P. J., and Yegan, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Infants § 16--Offenses Against Infants--Felony Child Abuse Statute--Evidence--Sufficiency. Substantial evidence supported defendant's felony child abuse conviction (Pen. Code, § 273a, subd. (a)). A search of defendant's residence had revealed a narcotics laboratory, and there was also a child's bedroom that looked like it was being lived in. Defendant was married to a woman who had a six-year-old son from a previous relationship. The child lived with his grandmother, but visited his mother and defendant on weekends. Pen. Code, § 273a, subd. (a), prohibits a person from willfully exposing any child in his or her care or custody to danger likely to produce great bodily harm or death. In this case, the elements of the statute were met. First, the evidence was sufficient to demonstrate defendant's willingness to assume the care or custody of the child. These terms do not imply a familial relationship, but only a willingness to assume duties correspondent to the role of a caregiver. Defendant had married the child's mother, who moved into his home. He also invited the child into his home, gave him a room of his own, and allowed him to use an area in the living room. Second, the evidence was sufficient to show that defendant willfully exposed the child to danger that was likely to produce great bodily harm or death. Defendant's home contained extremely dangerous, highly flammable chemicals in the living room, dining room, kitchen and garage. Many were on the floor. Any reasonable person would have understood the risks posed to a child in such a setting.
[See 2 Witkin & Epstein, Cal. Criminal Law (2d ed. 1988) § 840.]
(2) Infants § 16--Offenses Against Infants--Felony Child Abuse--Indirect Child Abuse--Required Mens Rea:Words, Phrases, and Maxims--Criminal Negligence.
Cases involving "indirect" child abuse require a showing of criminal negligence. This is defined as reckless, gross, or culpable departure from the ordinary standard of due care-conduct that is incompatible with a proper regard for human life.

(3) Infants § 16--Offenses Against Infants--Felony Child Abuse Statute-- Purpose.
Public policy supports the protection of children against risks that they cannot anticipate. The felony child abuse statute was enacted in order to protect the members of a vulnerable class from abusive situations in which serious injury or death is likely to occur.

COUNSEL
Joseph B. de Illy, under appointment by the Court of Appeal, for Defendant and Appellant. *620
Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Carol Wendelin Pollack, Assistant Attorney General, and John R. Gorey, Deputy Attorney General, for Plaintiff and Respondent.
COFFEE, J.
Appellant challenges the sufficiency of the evidence supporting his felony child abuse conviction. We affirm.

Facts and Procedural History

Sheriff's Deputy Michael Thompson was on duty at 10:30 p.m. in East Lancaster. He saw appellant driving a white Toyota in front of him with expired tags. After running a check, he discovered its registration had been expired for over a year. Thompson made a lawful traffic stop in which appellant consented to a search that yielded a small quantity of marijuana. He was arrested.

A search of appellant's car revealed a cellophane wrapper in the ash tray which contained a small amount of methamphetamine (0.223 grams) and a Ziploc baggie on the driver's seat that yielded a small amount of cocaine base (0.0942 grams). Thirty-six boxes of pseudoephedrine cold medicine and three bottles of iodine tablets were found in the trunk.

A search of appellant's residence pursuant to a warrant revealed a "fume trap," in the living room: a five-gallon plastic bucket containing cat litter and tubing, designed to absorb deadly fumes released during the manufacture of methamphetamine. [FN1] In the dining room was a cardboard box, which held a container of muriatic acid, plastic filters of isopropyl alcohol, isotone, rubber gloves, tubing and hydrogen peroxide. A second box contained various liquids, including solvents and a mixture of hydrochloric acid and red phosphorous. In the kitchen was a jug containing a bilayered liquid that showed traces of methamphetamine and hydroxide. On the floor was a three-gallon pail of a caustic chemical that could melt the skin on contact.

FN1 Approximately three months before his arrest, appellant had purchased one pound of red phosphorous, which is used in the manufacture of methamphetamine. This is a two-stage process. Muriatic acid is combined with red phosphorous and iodine to make hydriatic acid for the initial reaction, which is then used to convert pseudoephedrine to methamphetamine.

In the garage were solvents, Coleman fuel, and a camp stove with white residue. There was also a fenced-off area in the backyard built up with trash. It was filled with empty containers of solvent, acitfed and lye, as well as a discarded respirator. *621

To set up the kind of laboratory that appellant had at his house would take approximately five minutes. To cook and process the methamphetamine would take from eight to twelve hours.

In the living room were several tables with a child's paperwork. There was also a child's bedroom with toys and drawings that looked "lived in." Appellant was married to Judith W., who had a six-year-old son from a previous relationship, Morgan. Morgan lived with his grandmother, but visited Judith on weekends, and had been there the weekend prior to the search.

A jury convicted appellant of the following six counts: 1) possession of ephedrine with intent to manufacture methamphetamine (Health & Saf. Code, § 11383, subd. (c)(1)); 2) possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)); 3) possession of cocaine (Health & Saf. Code, § 11350, subd. (a); 4) possession of marijuana while driving (Veh. Code, § 23222, subd. (b); 5) manufacturing of methamphetamine (Health & Saf. Code, § 11379.6, subd. (a); and 6) felony child abuse (Pen. Code, § 273a, subd. (a).) [FN2] The court sentenced appellant to five years in state prison.

FN2 All further statutory references are to the Penal Code unless otherwise indicated.

Discussion

Felony Child Abuse or Endangerment

(1a) We determine whether a rational trier of fact could have found appellant guilty beyond a reasonable doubt of felony child abuse. (*People v. McKelvey* (1991) 230 Cal.App.3d 399, 404 [281 Cal.Rptr. 359].) "Any person who, under circumstances or conditions likely to produce great bodily harm or death, ... having the care or custody of any child, willfully causes or permits the person or health of that ... child to be placed in a situation where his ... person or health is endangered, shall be punished by imprisonment ...." (§ 273a, subd. (a).)

Appellant first argues there was no direct evidence that he voluntarily assumed the role of caregiver of his stepson, or that they resided together. He claims he was not Morgan's biological father, and the fact that Morgan had a bedroom in the house and visited occasionally does not support the inference that Morgan was in his care or custody.

No special meaning attaches to this language "beyond the plain meaning of the terms themselves. The terms 'care or custody' do not imply a familial *622 relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832 [73 Cal.Rptr.2d 257] [a mother and her child had moved into the defendant's home where the defendant later caused the child's death].)

Here, appellant had married Judith, who moved into his home. He also invited Morgan into his home, gave him a room of his own and allowed him to use an area in the living room where the child's paperwork was found. This evidence is sufficient to demonstrate appellant's willingness to assume the care or custody of Morgan.

The second requirement under the statute is that the prohibited conduct be both willful and " ' "likely to produce great bodily harm or death. " ' " (*People v. Sargent* (1999) 19 Cal.4th 1206, 1216 [81 Cal.Rptr.2d 835, 970 P.2d 409]; *People v. Odom* (1991) 226 Cal.App.3d 1028, 1032 [277 Cal.Rptr. 265].) The act need not, however, result in great bodily injury.(*Sargent, supra*, at p. 1216; *Odam, supra*, at p. 1033.)

(2) Cases involving "indirect abuse" require a showing of criminal negligence. (*People v. Sargent, supra*, 19 Cal.4th at p. 1218.)This is defined as " 'reckless, gross or culpable departure from the ordinary standard of due care; ... conduct ... [which is] incompatible with a proper regard for human life.' " (*People v. Odom, supra*, 226 Cal.App.3d at p. 1032 [child endangerment existed where home had exposed wiring, was scattered with dog feces, pipes in kitchen sink were eaten away by chemicals; spoiled food was scattered throughout kitchen; no food was in the cupboards; and there was a hole in the roof. The home also contained loaded weapons and caustic chemicals for the manufacture of methamphetamine.].)

The *Odom* court concluded that it would have been impossible to protect the children residing in the house from their natural curiosity concerning "wires, guns, dogs and chemicals," or the home's general lack of safety precautions. It also stated that even if methamphetamine was not manufactured at the home, but at another location, the storing of the chemicals in the home created a danger. (*People v. Odom, supra*, 226 Cal.App.3d at p. 1035.)

(3) Public policy supports the protection of children against risks they cannot anticipate. The felony child abuse statute "was enacted in order to protect the members of a vulnerable class from abusive situations in which serious injury or death is likely to occur." (*People v. Heitzman* (1994) 9 Cal.4th 189, 203-204 [37 Cal.Rptr.2d 236, 886 P.2d 1229] [application of the elder abuse statute, which was patterned after the felony child abuse statute].) *623

(1b) Appellant's home contained extremely dangerous chemicals in the living room, dining room, kitchen and garage. Many were on the floor. In the backyard was a pile of debris indicating the use of these chemicals. Not only were the chemicals dangerous in themselves, they were also highly flammable. Any reasonable person would understand the risks posed to a child in such a setting. Appellant willfully exposed Morgan to danger that was likely to produce great bodily harm. The elements of the statute were met. We need not reach the issue of whether methamphetamine was manufactured in the house or at another site.

The judgment is affirmed.

Gilbert, P. J., and Yegan, J., concurred.
A petition for a rehearing was denied December 22, 1999, and appellant's petition for review by the Supreme Court was denied March 15, 2000. Mosk, J., was of the opinion that the petition should be granted. *624

76 Cal.App.4th 618, 90 Cal.Rptr.2d 578, 99 Cal. Daily Op. Serv. 9397, 1999 Daily Journal D.A.R. 12,077
(Cite as: 76 Cal.App.4th 618)

Cal.App.2.Dist.
People v. Toney
76 Cal.App.4th 618, 90 Cal.Rptr.2d 578, 99 Cal. Daily Op. Serv. 9397, 1999 Daily Journal D.A.R. 12,077

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HTHE PEOPLE, Plaintiff and Respondent,
v.
MARCOS TREVINO, Defendant and Appellant. In re MARCOS TREVINO on Habeas Corpus.
No. S085410.

Supreme Court of California
July 26, 2001.

SUMMARY

efendant was sentenced to imprisonment for life without possibility of parole for a murder he committed in 1996, with the special circumstance that he had previously been convicted of murder in Texas in 1978 (Pen. Code, § 190.2, subd. (a)(2)). Defendant was 33 years old when he committed the 1996 murder, and he was 15 years old when he committed the prior Texas murder. In 1978, a person could not have been tried as an adult in California for an offense committed at an age younger than 16 years. (Superior Court of Los Angeles County, No. BA128885, Jacqueline A. Connor, Judge.) The Court of Appeal, Second Dist., Div. Three, Nos. B118891 and B134606, reversed the special circumstance finding and denied defendant's petition for a writ of habeas corpus.

The Supreme Court reversed the judgment of the Court of Appeal insofar as it reversed the superior court's judgment, remanded the appeal to the Court of Appeal with directions to affirm the superior court's judgment in all respects, and affirmed the Court of Appeal's denial of defendant's petition for a writ of habeas corpus. The court held that a conviction in another jurisdiction may be deemed a conviction of first or second degree murder for purposes of California's prior-murder special circumstance if the offense involved conduct that satisfies all the elements of the offense of murder under California law, whether or not the defendant, when he or she committed that offense, was old enough to be tried as an adult in California. It is the offense, and not necessarily the offender, that must satisfy statutory requirements for punishment under California law as first or second degree murder. (Opinion by Kennard, J., with Baxter, Chin, and Brown, JJ., concurring. Dissenting opinion by George, C. J., with Werdegar, J., concurring (see p. 244).)

HEADNOTES

Classified to California Digest of Official Reports

(1) Statutes § 30--Construction--Language--Plain Meaning.
The task of statutory construction is to ascertain and effectuate legislative intent. Courts begin by considering the words of the statute, because they are generally the most reliable indicator of legislative intent. When looking to the words of the statute, a court gives the language its usual, ordinary meaning.

(2a, 2b, 2c) Homicide § 101.4--Punishment--Prior-murder Special Circumstance--Predicated on Out-of-state Murder Not Whether Defendant Would Have Been Subject to California Juvenile Law.
A conviction in another jurisdiction may be deemed a conviction of first or second degree murder for purposes of California's prior-murder special circumstance if the offense involved conduct that satisfies all the elements of the offense of murder under California law, whether or not the defendant, when he or she committed that offense, was old enough to be tried as an adult in California. Pen. Code, § 190.2, subd. (a)(2), provides that an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree. Thus, the focus is on the conduct, not the age or other personal characteristics of the person who engaged in that conduct. It is the offense, and not necessarily the offender, that must satisfy statutory requirements for punishment under California law as first or second degree murder. Accordingly, defendant, who was convicted of first degree murder in California when he was 33 years old, was subject to the enhancement where he had been convicted in Texas of a first degree murder committed when he was 15 years old, even though the Texas murder occurred at a time when defendant could not have been tried as an adult in California.
[See 3 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Punishment, § 439; West's Key Number Digest, Homicide k. 354(2).]
(3) Statutes § 24--Construction--Inferences--Different

Language as to Same Subject.
When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning.

(4) Criminal Law § 514--Punishment:Words, Phrases, and Maxims--Punishable.
"Punishable" has been defined as deserving of or capable or liable to punishment; capable of being punished by law or right. The word does not denote certainty of punishment, but only the capacity therefor.

COUNSEL

Gail Harper, under appointment by the Supreme Court, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Carol Wendelin Pollack, Assistant Attorney General, Sanjay T. Kumar, John R. Gorey, Kenneth C. Byrne and Alan D. Tate, Deputy Attorneys General, for Plaintiff and Respondent.

KENNARD, J.

In California, the penalty for first degree murder is either death or life imprisonment without possibility of parole if the prosecution proves one or more of the special circumstances specified in Penal Code section 190.2. [FN1] (See *People v. Bacigalupo* (1993) 6 Cal.4th 457, 467-468 [24 Cal.Rptr.2d 808, 862 P.2d 808].) One of these special circumstances, commonly known as the prior-murder special circumstance, is that "[t]he defendant was convicted previously of murder in the first or second degree." (§ 190.2, subd. (a)(2).) For this purpose, "an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree." (*Ibid.*)

FN1 All further statutory references are to the Penal Code unless otherwise stated.

Under these provisions, defendant Marcos Trevino was sentenced to imprisonment for life without possibility of parole for a murder he committed in 1996, with the special circumstance that he had previously been convicted of murder in Texas in 1978. Defendant was 33 years old when he committed the current murder, and he was 15 years old when he committed the prior Texas murder. Since January 1, 1995, a person may be tried as an adult in California for a murder committed at the age of 14 years or older. (See Welf. & Inst. Code, § 707, subd. (d)(2); *Hicks v. Superior Court* (1995) 36 Cal.App.4th 1649 [43 Cal.Rptr.2d 269].) In 1978, however, a person could not have been tried as an adult in California for an offense committed at an age younger than 16 years. (*People v. Andrews* (1989) 49 Cal.3d 200, 221, fn. 18 [260 Cal.Rptr. 583, 776 P.2d 285].)***240**

The issue defendant raises here is this: May a prior-murder special-circumstance finding be based on an offense committed in another jurisdiction if, under the law as it then was, the defendant was too young to be tried as an adult in California? We conclude that it may.

I

The circumstances of the homicide that resulted in defendant's current murder conviction need not be repeated in detail here. It is sufficient to note that a jury found him guilty of first degree murder (§§ 187, subd. (a), 189), with a finding that he personally used a firearm to commit the offense (§ 12022.5, subd. (a)), based on evidence that in February 1996, after quarrelling with Mario Nunez in the yard of defendant's residence, defendant obtained a handgun from his house and shot the unarmed Nunez three times at close range, firing the final shot while Nunez was lying helpless on the ground.

In 1978, when he was 15 years old, defendant had been tried as an adult and convicted of murder in Texas. The prosecution alleged the Texas conviction as a qualifying prior-murder special circumstance. Defendant moved to strike this allegation, arguing that because he could not then have been tried as an adult in California if he had committed the same offense in this state, the Texas conviction could not be deemed a conviction of first or second degree murder under the prior-murder special circumstance. The trial court denied the motion to strike. Defendant then admitted the allegation.

For the first degree murder of Nunez, with the prior-

murder special circumstance based on the 1978 Texas murder conviction, the superior court sentenced defendant to imprisonment for life without possibility of parole. Defendant appealed from the judgment of conviction. In the Court of Appeal, defendant renewed his argument, rejected by the trial court, that the prior-murder special circumstance could not be based on an offense committed in another jurisdiction if, when he committed that offense, the defendant was too young to be tried as an adult in California. Agreeing with defendant, the Court of Appeal set aside the prior-murder special-circumstance finding, vacated the sentence, and remanded the matter to the trial court for resentencing. The court denied defendant's related petition for a writ of habeas corpus. We granted the People's petition for review.

II

(1) The issue before us is one of statutory construction. Our task "is to ascertain and effectuate legislative intent." (***241***People v. Gardeley* (1996) 14 Cal.4th 605, 621 [59 Cal.Rptr.2d 356, 927 P.2d 713].) We begin by considering the statute's words because they are generally the most reliable indicator of legislative intent. (*Ibid.*; see also *Holloway v. United States* (1999) 526 U.S. 1, 6 [119 S.Ct. 966, 969, 143 L.Ed.2d 1].) "When looking to the words of the statute, a court gives the language its usual, ordinary meaning." (*People v. Snook* (1997) 16 Cal.4th 1210, 1215 [69 Cal.Rptr.2d 615, 947 P.2d 808]; accord, *Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268 [36 Cal.Rptr.2d 563, 885 P.2d 976].)

(2a) The provision we must construe reads: "For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree." (§ 190.2, subd. (a)(2).) According to the ordinary meaning of this text, a conviction in another jurisdiction may be used if the "offense" would be punishable as first or second degree murder if committed in California. Thus, the focus is on the *conduct*, not the age or other personal characteristics of the person who engaged in that conduct. It is the *offense*, and not necessarily the offender, that must satisfy statutory requirements for punishment under California law as first or second degree murder.

Section 190.2 was enacted by voter initiative in 1978, but the language of its subdivision (a)(2) is identical to a provision that the Legislature enacted as part of the 1977 death penalty law. (*People v. Andrews, supra*, 49 Cal.3d 200, 222.)In the absence of anything suggesting the contrary, we infer that the voters who enacted section 190.2 intended subdivision (a)(2) to have the same meaning as the identically worded provision drafted by the Legislature.

The Legislature knows how to draft a provision to require consideration of the defendant's age or other personal characteristic when it wants to impose this requirement. The Legislature has provided in section 668: "Every person who has been convicted in any other state, government, country, or jurisdiction of an offense for which, if committed within this state, *that person* could have been punished under the laws of this state by imprisonment in the state prison, is punishable for any subsequent crime committed within this state in the manner prescribed by law and to the same extent as if that prior conviction had taken place in a court of this state." (Italics added.) According to the plain meaning of this text, a conviction in another jurisdiction may be used if the same "person" could have been punished by imprisonment for the same conduct had it been committed in this state. Thus, section 668 ***242** would permit consideration of a defendant's age in determining whether *that defendant* could have been imprisoned for the same conduct in California. [FN2]

FN2 Defendant does not argue that section 668 has any application to a special circumstance or controls the construction of section 190.2, subdivision (a)(2). As we have explained, section 668 "does not apply outside the realm of determinate sentence enhancements." (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1261 [278 Cal.Rptr. 640, 805 P.2d 899].) Nor is this conclusion affected by the Legislature's amendment of section 668 in 1999 to provide that it applies to "all statutes that provide for an enhancement or a term of imprisonment based on a prior conviction or a prior prison term." (Stats. 1999, ch. 350, § 1.) The Legislature stated that the amendment was "intended to be declaratory of existing law as contained in People v. Butler (1998) 68 Cal.App.4th 421 [80 Cal.Rptr.2d 357], at pages 435-441." (Stats. 1999, ch. 350, § 4.) *Butler*, in turn, cited our

> decision in *Pensinger* as fixing the scope of section 668. (*People v. Butler, supra,* at p. 440.)

(3) When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning. (*People v. Drake* (1977) 19 Cal.3d 749, 755 [139 Cal.Rptr. 720, 566 P.2d 622].) (2b)Consistent with this general principle of statutory construction, we infer that the Legislature, when it used wording distinctly different from section 668 to define the circumstances under which offenses committed in other jurisdictions would qualify for use under the prior-murder special-circumstance provision of the 1977 death penalty law, did not intend to incorporate all the restrictions of section 668. And we infer that the voters had the same intent when they used the language of the 1977 death penalty law's prior-murder special-circumstance provision in section 190.2. We therefore conclude that under section 190.2, subdivision (a)(2), the determination whether a conviction in another jurisdiction qualifies under California's prior-murder special circumstance depends entirely upon whether the offense committed in the other jurisdiction involved conduct that satisfies all the elements of first or second degree murder under California law.

In reaching a different conclusion, the Court of Appeal relied on the reasoning of our decision in *People v. Andrews, supra,* 49 Cal.3d 200.There, this court upheld a prior-murder special-circumstance finding based on the defendant's 1967 Alabama murder conviction for a crime he had committed when he was 16 years old. In 1967, a person of the defendant's age could have been tried as an adult for murder in California, but only if the juvenile court had found him unfit to be dealt with under juvenile court law. The defendant argued that this restriction precluded use of the Alabama conviction as a basis for the prior-murder special-circumstance finding.

Rejecting the argument, we stated:

"The language of the statute does not support defendant's interpretation. Defendant is attempting to characterize the words 'would be punishable' ***243** as if they were synonymous with the term 'would be punished.' (4) 'Punishable' has been defined as '[d]eserving of or capable or liable to punishment; capable of being punished by law or right.' (Black's Law Dict. (5th ed. 1979) p. 1110, col. 1.) The word does not denote certainty of punishment, but only the capacity therefor. Any minor between the ages of 16 and 18 who commits murder in California, and has been found unfit to be treated as a juvenile, can be tried and convicted as an adult and thus be liable to punishment as a murderer.

"To accept defendant's statutory construction would mean that every time the prosecution alleged a murder conviction from a foreign jurisdiction, the trial court must determine whether the guilt ascertainment procedures of that jurisdiction afforded the same procedural protections as those in California. We do not read such a requirement into the statute.

"In some states a defendant is not entitled to a preliminary hearing. (See *Hawkins v. Superior Court* (1978) 22 Cal.3d 584 [150 Cal.Rptr. 435, 586 P.2d 916]; Annot., Limitations on State Prosecuting Attorney's Discretion to Institute Prosecution by Indictment or by Information (1986) 44 A.L.R.4th 401.)In others, a jury consisting of fewer than 12 persons can determine guilt. (See *Williams v. Florida* (1969) 399 U.S. 78 [26 L.Ed.2d 446, 90 S.Ct. 1893].) In still others there is no fitness hearing to determine whether a 16 year old should be treated as an adult. While any one of these procedural differences might conceivably spell the difference between a murder conviction and some other result, nothing before us indicates that the Legislature, in enacting the 1977 death penalty legislation, or the electorate, in later duplicating its language, intended that the prosecution's ability to use convictions from other states should turn on such questions. *Rather, it appears the intent was to limit the use of foreign convictions to those which include all the elements of the offense of murder in California, and defendant has failed to show otherwise.*" (*People v. Andrews, supra,* 49 Cal.3d 200, 222-223, italics added.)

In a footnote, we added: "We express no views as to the validity of a prior-murder special-circumstance finding which is based on the conviction of a defendant under the age of 16 in a jurisdiction which permits such a minor to be tried as an adult." (*People v. Andrews, supra,* 49 Cal.3d 200, 223, fn. 19.)

Because we declined to express any view as to the validity of a prior-murder special-circumstance find-

ing based on an offense committed in another jurisdiction when the defendant was too young to be tried as an adult in California, our decision in *People v. Andrews, supra,* 49 Cal.3d 200, is not ***244** controlling authority here. Nor is our analysis there inconsistent with our conclusion here. In *Andrews*, we rejected the argument that "punishable" in section 190.2, subdivision (a)(2), denotes certainty of punishment, rather than simply the capacity therefor. Most significantly, we concluded that the most plausible reading of the provision at issue was that it "limit[s] the use of foreign convictions to those which include all the elements of the offense of murder in California." (*People v. Andrews, supra,* at p. 223.)That is precisely the conclusion we reach here.

(2c) Because the age of the offender is not an element of first or second degree murder under California law, the prior-murder special circumstance may be based on a conviction in another jurisdiction for a crime for which the defendant could not have been tried as an adult in California.

III

We conclude that a conviction in another jurisdiction may be deemed a conviction of first or second degree murder for purposes of California's prior-murder special circumstance if the offense involved *conduct* that satisfies all the elements of the offense of murder under California law, whether or not the defendant, when he committed that offense, was old enough to be tried as an adult in California. Here, defendant murdered one person in Texas in 1978 when he was 15 years old-an age at which he could be convicted as an adult in Texas then and in California now-and another in California in 1996 when he was 33. Under the construction we adopt for the prior-murder special circumstance, it makes no difference, when determining the appropriate sentence for the latter crime, committed when defendant was unquestionably an adult, that he could not have been tried as an adult in California in 1978.

We reverse the judgment of the Court of Appeal insofar as it reversed the superior court's judgment on defendant's appeal (B118891), and we remand the appeal to that court with directions to affirm the superior court's judgment in all respects. We affirm the Court of Appeal's judgment denying defendant's petition for a writ of habeas corpus (B134606).

Baxter, J., Chin, J., and Brown, J., concurred.

GEORGE, C. J., Dissenting.

The majority determines that a 1978 murder conviction entered in Texas for a crime committed when the defendant was 15 years of age constitutes a prior murder conviction for the purpose of Penal Code section 190.2, subdivision (a)(2), despite the circumstance that, ***245** because of his age, defendant could not have been convicted of murder in California at that time. [FN1] I disagree.

FN1 All statutory references are to the Penal Code unless otherwise indicated.

At issue is a provision of section 190.2, which defines special circumstances that, if demonstrated, render a defendant charged with murder subject to the death penalty or life in prison without the possibility of parole. One such special circumstance is shown if the defendant has a prior murder conviction, specifically, if "[t]he defendant was convicted previously of murder in the first or second degree." (§ 190.2, subd. (a)(2).) The statute further provides: "For the purpose of this paragraph, an offense committed in another jurisdiction, which *if committed in California* would be punishable as first or second degree murder, shall be deemed murder in the first or second degree." (Italics added.)

Defendant was convicted of murder in Texas in 1978, for a crime committed when he was 15 years of age. Defendant, like any other person who committed a murder at age 15 in California at that time, could not have been tried in California as an adult had he been accused of murder in California, nor could he have been punished by a term in state prison. (See former Welf. & Inst. Code, § 602, as amended by Stats. 1976, ch. 1071, § 12, p. 4819; see also former Welf. & Inst. Code, § 707, as amended by Stats. 1977, ch. 1150, § 2, p. 3693.) Rather, he would have been subject to the jurisdiction of the juvenile court, which would not have entered a criminal conviction, but instead would have adjudged him to be a ward of the court. (*Ibid.*) Thus, his act would and could not at that time be "punishable as first or second degree murder."

The majority, however, concludes that the crucial words of section 190.2, subdivision (a)(2), are "an offense," and that a proper interpretation of the stat-

ute turns on a comparison of the elements of the offense in California and in the foreign jurisdiction, rather than on any personal characteristic of the defendant. Because the crime of murder as defined in Texas and California in 1978 consisted of the same elements, the majority concludes that defendant's Texas murder conviction fits the proviso of section 190.2, subdivision (a)(2).

Viewed in isolation, it may be the case that the reference to "an offense" in a statute ordinarily would relate only to a crime in the abstract- to the elements of the offense-and not to a defendant's status or personal characteristics. Section 190.2, subdivision (a)(2), refers, however, not simply to "an offense" but to an offense that "would be punishable as" murder if committed in California. We should give effect to the words "would be ***246** punishable as," since in interpreting a statute, we generally should give effect to each word employed by the Legislature. (See *People v. Woodhead* (1987) 43 Cal.3d 1002, 1010 [239 Cal.Rptr. 656, 741 P.2d 154].) It seems evident that the words "would be punishable as" refer not merely to the elements of the offense but to the potential punishment that could be imposed. A murder committed by a person 15 years of age was not "punishable as" a murder in California in 1978, because at that time, only minors 16 years of age or older could be found fit to be tried and punished as adults. (See former Welf. & Inst. Code, § 707, as amended by Stats. 1977, ch. 1150, § 2, p. 3693.)

I do not agree with the majority that section 190.2, subdivision (a)(2), does not refer to the status, personal characteristics, or circumstances of the accused. Certainly the majority is correct to the extent that the statute does not permit the defendant to avoid the special circumstance by pointing to differing affirmative defenses in California and the foreign jurisdiction or to different rules regarding such matters as jury selection or jury unanimity. The statute does not contemplate a trial within a trial to determine whether, if defendant had been charged with the crime in California, he or she *would* have been convicted given the evidence of guilt that was introduced. But this does not suggest that the status of the defendant, leaving aside the facts of the crime, is irrelevant. The question is not whether the defendant *would* have been convicted and punished in California for the offense of murder under the particular circumstances of the crime, but whether he or she *could* have been convicted and punished in California for that offense. A trial within a trial would not be necessary to resolve this issue. The clearly established circumstance of the defendant's age at the time of the offense should be considered relevant when that age would render the offense not "punishable as first or second degree murder."

The majority offers in support of its interpretation the claim that the Legislature "knows how" to draft a provision requiring consideration of the defendant's age or other personal characteristics, and that its failure to do so expressly in section 190.2, subdivision (a)(2), indicates that it did not intend that personal characteristics be considered. Specifically, the majority suggests that if the Legislature intended personal characteristics of the defendant to be relevant under section 190.2, subdivision (a)(2), it would have employed language such as the following found in section 668: "Every person who has been convicted in any other ... jurisdiction of an offense for which, if committed within this state, that person could have been punished under the laws of this state by imprisonment in the state prison ...."

I do not believe that a strong inference regarding legislative intent can be drawn from the Legislature's failure to employ the language of section 668, ***247** but in any event, the majority's own interpretation of section 190.2, subdivision (a)(2), is subject to the same claim. Assuming the Legislature's intent was limited to comparing the elements of the crime of murder in the foreign jurisdiction and in California, the Legislature similarly would know how to state this specifically-it could have employed language such as that found in section 667.51, which provides for enhanced punishment for those with prior sex offense convictions, including "any offense committed in another jurisdiction that includes all of the elements of ... the [California] offenses ...." (§ 667.51, subd. (b); see also §§ 667.51, subd. (c), 667.61, subd. (d)(1), 667.71, subd. (c)(14).)

The interpretation offered by the majority produces the anomaly that defendant is subject to the special circumstance only because his prior offense was committed in Texas; had it been committed in California, he could have been committed only as a juvenile, and would not have been "previously convicted of murder" as section 190.2, subdivision (a)(2), requires. Thus, under the majority's view defendants

whose prior juvenile offenses were committed in another state are treated more harshly than those whose offenses were committed in California. No legislative rationale has been suggested for such a distinction in treatment, and it would raise serious constitutional questions.

The interpretation I have suggested, of course, does not eliminate all anomalies in the statute's application to prior juvenile murders, particularly because California juvenile law with respect to the treatment of youthful offenders has changed over the years. (See, e.g., Welf. & Inst. Code, § 602, subd. (b) [providing for prosecution in adult court of persons over the age of 14 years when enumerated offenses are charged].) But it remains true that the interpretation offered by the majority would make the existence of a prior-murder special circumstance depend upon whether the prior offense occurred in California or in some other state. That type of anomaly would be inconsistent with the apparent legislative intent to provide equal treatment of defendants under this provision of the death penalty statute regardless whether their prior crimes were committed in California or in another jurisdiction.

In support of a conclusion consistent with that reached by the majority, counsel for respondent claimed at oral argument that if Texas were to convict and punish 10 year olds as adults for murder, California would be bound by section 190.2, subdivision (a)(2), to follow suit with respect to the prior-murder special circumstance, stating that "we should give credit to that conviction and the finding by the Texas courts that this person was suitable to be tried as an adult. We do have some 10 year olds out there committing ***248** some very heinous crimes. I hate to see that happen but sometimes that needs to be recognized and I think we have to give deference to those types of findings from other states." I disagree. In my view, section 190.2, subdivision (a)(2), does not require or contemplate this type of deference to other states' determinations regarding what type of defendant is subject to punishment *in California* for first or second degree murder.

In sum, I believe that the language of section 190.2, subdivision (a)(2), is truly ambiguous, as is the evidence of legislative intent to be derived from the Legislature's failure to employ the more precise language that it has used in other statutes. Reasonable minds can differ-as they have in the Court of Appeal and in this court-over the proper interpretation of section 190.2, subdivision (a)(2). In my view, the interpretation I have suggested is the more reasonable, given the statutory language. At the very least, I believe that it is *as* reasonable as the interpretation offered by the majority, so that the statutory provision before us presents an appropriate occasion on which to construe any ambiguity in the statutory language " 'as favorably to the defendant as its language and the circumstances of its application may reasonably permit ....' " (*People v. Garcia* (1999) 21 Cal.4th 1, 10 [87 Cal.Rptr.2d 114, 980 P.2d 829]; see also *People v. Hicks* (1993) 6 Cal.4th 784, 795-796 [25 Cal.Rptr.2d 469, 863 P.2d 714].) Under these circumstances, I believe that the words "would be punishable as first or second degree murder" should lead us to interpret the statute so that it would not include the conviction of a minor in a foreign jurisdiction for an offense that could not have been punished as first or second degree murder had the offense been committed in California.

For these reasons, I respectfully dissent.

Werdegar, J., concurred.

Cal. 2001.
People v. Trevino
26 Cal.4th 237, 27 P.3d 283, 109 Cal.Rptr.2d 567, 00 Cal. Daily Op. Serv. 6317, 2001 Daily Journal D.A.R. 7763

END OF DOCUMENT

RRLH, INC., Plaintiff and Appellant,
v.
SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT et al., Defendants and Appellants.
Nos. G008422, G008703.

Court of Appeal, Fourth District, Division 3, California.
Aug. 22, 1990.

SUMMARY

Pursuant to Gov. Code, § 53080 (authority of school district to impose developer fees), and Gov. Code, § 65995 (limitations on imposition of developer fees), a school district adopted a resolution authorizing the levy of school impact fees of $1.50 per square foot on new residential development and 25 cents per square foot on new commercial and industrial development. In connection with the development of a residential apartment complex for senior citizens, the school district imposed fees at the residential rate and required the developer to pay the fees prior to obtaining a building permit for the project. Thereafter, the Legislature enacted Gov. Code, § 65995.1, which provides that school impact fees for the development of senior citizen housing are restricted to the lower rate imposed on commercial or industrial development. The developer brought an action seeking refund of the fees, claiming that under the provisions of former Gov. Code, § 53077.5 (fees for construction of improvements on residential development), the fees should not have been assessed until the later of the date of the final inspection, or the date the certificate of occupancy was issued, that the fees then would have been payable after the effective date of Gov. Code, § 65995.1, and that such statute would have been applicable, and thus, the fees would have been assessed at the lower rate for senior citizens' housing. The trial court denied the refund. (Superior Court of Orange County, No. 542526, John H. Smith, Jr., Judge.)

The Court of Appeal affirmed. It held that the trial court properly denied the refund, since the school district's collection of the fees was governed by the more specific statute, Gov. Code, § 53080, which authorized a school district to levy fees on development projects and prohibited cities and counties from issuing building permits in the absence of certification by the relevant school district that the development project had paid the fees, rather than the more general statute, former Gov. Code, § 53077.5, which generally governed the imposition of fees by local agencies. (Opinion by Wallin, J., with Moore, Acting P. J., and Crosby, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Limitation of Actions § 65--Waiver and Estoppel--Effect of Raising Issues in Pleadings but Not at Trial.
In an action by a developer for a refund of school impact fees paid under protest, which was not timely filed, the issue of timeliness was foreclosed on appeal. Even though the school district raised the statute of limitations as an affirmative defense in its answer, the district did not assert the defense at trial, the trial court made no factual findings based on it, and the district did not raise it on appeal. The statute of limitations is an issue that can be waived.

(2a, 2b) Schools § 4--School Districts; Financing; Funds--School Impact Fees--Controlling Statutory Authority.
In an action by a developer of a residential apartment complex for senior citizens for a refund of school impact fees paid under protest, the trial court did not err in denying the refund The school district had properly exercised its authority to impose the fees at the higher rate set for residential projects and to require payment before a building permit could be issued for the project. The district's levy of the fees was controlled by Gov. Code, § 53080, which authorizes a school district to levy a fee against a development project and prohibits a city or county from issuing a building permit absent a certification by the school district that the development project had paid such fees It was not governed by former Gov. Code, § 53077.5, which generally governed local agencies and prohibited them from requiring payment of fees they imposed on residential developments for the construction of public facilities until the later of the date of the final inspection or the date the certificate

of occupancy was issued. A specific statutory provision, such as Gov. Code, § 53080, relating to a particular subject will prevail over a general provision, such as former Gov. Code, § 53077.5, even if the general provision is broad enough to encompass the subject of the particular legislation. Since the fees were properly collected prior to issuance of a building permit, Gov. Code, § 65995.1, which became effective after the fees were imposed and which limits school impact fees for the development of senior citizen housing to the lower rate for commercial or industrial development did not apply.
[See **Cal.Jur.3d**, Schools, § 58.]
(3) Statutes § 21--Construction--Legislative Intent.
Courts, when construing statutes, must ascertain the intent of the Legislature. Legislation must be given a reasonable, commonsense interpretation consistent with the apparent purpose of the Legislature. In addition, legislation should be interpreted so as to give significance to every word, phrase, and sentence of an act. All parts of the legislation must be harmonized by considering the questioned parts in the context of the statutory framework taken as a whole.

(4) Statutes § 21--Construction--Legislative Intent--Effect of Amendment.
The fact that a prior law has been amended demonstrates an intent to change the preexisting law.

COUNSEL

Stradling, Yocca, Carlson & Rauth, Thomas A. Pistone and Julie M. McCoy for Plaintiff and Appellant.

Rourke & Woodruff, Thomas L. Woodruff and Thomas F. Nixon for Defendants and Appellants.

WALLIN, J.

Plaintiff RRLH, Inc. (referred to by the parties as Rossmoor), appeals a judgment, after a court trial on stipulated facts, denying relief in its suit for refund of school impact fees paid under protest to defendant Saddleback Valley Unified School District. Saddleback cross-appeals from an order denying its motion to vacate the judgment. We affirm the judgment and dismiss Saddleback's appeal. ***1605**

On October 28, 1986, Saddleback adopted resolution No. 23:86-87, pursuant to Government Code sections 53080 and 65995, subdivision (b)(3), [FN1] authorizing the levy of a $1.50 per square foot fee on new residential development and a 25 cents per square foot fee on new commercial and industrial development within Saddleback's boundaries. The fees were imposed in connection with Rossmoor's development of the "Regency," a residential apartment complex for senior citizens.

FN1 All statutory references are to the Government Code unless otherwise specified.

Saddleback imposed fees at the rate of $1.50 per square foot in the total amount of $300,993, and Rossmoor was required to pay the fees prior to obtaining a building permit for the project. Rossmoor tendered payment in full under protest pursuant to former section 65913.5 (renumbered § 66008 and amended by Stats. 1988, ch. 418, § 4) on May 11, 1987.

Effective March 14, 1988, section 65995.1 was added to the Government Code and provided that school impact fees "as to any development project for the construction of senior citizen housing" were restricted to the rate for commercial or industrial development, that is, 25 cents per square foot.

In its complaint Rossmoor challenged, among other things, the timing of the collection of the fees by Saddleback. Rossmoor contends it should not have been required to pay the school impact fees prior to obtaining a building permit for the project. Rather, under the provisions of former section 53077.5 (renumbered § 66007 and amended by Stats. 1988, ch. 418, § 3), the fees should not have been assessed "until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs last ...." If Rossmoor is right and the collection of school impact fees was governed by former section 53077.5 rather than section 53080, the fees would not have been payable until October 1988, at which time section 65995.1 would have been applicable. Because the Regency was constructed as senior citizen housing, the applicable school impact fee rate would have been 25 cents per square foot rather than the $1.50 per square foot levied by Saddleback.

(1)**(See fn. 2.)** Rossmoor filed its complaint for declaratory relief, mandatory injunction and conversion on December 4, 1987. [FN2]Rossmoor ***1606** originally

challenged imposition of the school fees on several grounds, including: (1) the fees amounted to an unauthorized tax; and (2) the Regency was a commercial, rather than a residential, development and fees should have been assessed at the lower rate. At the time of trial, however, those claims were dropped and Rossmoor's only contention was that the fees were collected too early, because they were not due and payable until October 1988 when the senior citizen development rate was in effect.

> FN2 In its answer Saddleback raised the statute of limitations as an affirmative defense claiming Rossmoor's action was barred by the provisions of section 66008, subdivision (d), which requires payment of the fee and filing of a written protest within 90 days after the date of the imposition of the fees, and also provides an action challenging the fees must be filed "within 180 days after the date of the imposition" of the fees. Saddleback did not assert this defense at trial; the trial court made no factual findings based on it; and Saddleback does not raise it here. It does appear, however, that Rossmoor's suit was not timely filed. (*North State Development Co. v. Pittsburg Unified School Dist.* (1990) 220 Cal.App.3d 1418, 1423-1425 [270 Cal.Rptr. 166]; cf. *Balch Enterprises, Inc. v. New Haven United School Dist.* (1990) 219 Cal.App.3d 783, 787-790 [219 Cal.App.3d 783].) The statute of limitations is a defense that can be waived. While Saddleback raised the defense in its pleadings, the trial of this matter proceeded on the theory the statute of limitations was not in issue. That being the "theory of the trial," the issue is foreclosed on appeal. (See *Hilliard v. A. H. Robins Co.* (1983) 148 Cal.App.3d 374, 392 [196 Cal.Rptr. 117]; 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, §§ 316-318, pp. 327-330.)

The matter was submitted on stipulated facts, certain declarations and exhibits. In addition the court considered Saddleback's motion for summary judgment. The trial court issued a minute order on April 3, 1989, which stated, "The Court having considered all the evidence, pleadings and Points and Authorities submitted by both sides in this case, hereby grants [Saddleback's] Motion for Summary Judgment." A proposed order granting judgment and a judgment were signed and filed by the court on April 13, 1989.

On the same date Rossmoor filed a notice that it would appear on April 21 to request clarification of the court's April 3 minute order. [FN3]Counsel for Saddleback did not appear on April 21, and a reporter's transcript of that hearing is not part of the record. On July 7 the trial court signed and filed an amended order granting judgment for Saddleback and on July 12 an amended judgment was entered in favor of Saddleback. On July 19 Rossmoor filed its notice of appeal from the amended judgment. On July 27 Saddleback filed a motion to vacate the amended order for judgment and the amended judgment claiming they were void. The trial court denied Saddleback's motion on the ground that Rossmoor's appeal of the amended judgment removed jurisdiction from the trial court. Saddleback appeals the denial of its motion to vacate, and the two appeals have been consolidated here.

> FN3 It is understandable that Rossmoor might seek clarification of the order granting Saddleback's motion for summary judgment since that motion did not encompass the one issue presented at trial, that is, whether the timing of payment of school impact fees imposed by Saddleback was governed by section 53080 or section 66007. Saddleback's motion for summary judgment sought resolution of the several issues raised in Rossmoor's complaint which were apparently abandoned at the time of trial.

Rossmoor contends Saddleback acted prematurely in requiring payment of the school fees prior to issuance of the building permit for the Regency ***1607** because the fees were not due until the project was completed as provided in former section 53077.5. Former section 53077.5, subdivision (a) provided: "Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs last ...."

In its amended order for judgment the trial court

found that the payment of school impact fees is governed by section 53080 and that "[Saddleback] properly levied and collected [the] school impact fees from [Rossmoor] in May, 1987, at the time of issuance of the building permit for the Rossmoor Regency." Section 53080, subdivision (a)(1) provides in pertinent part: "The governing board of any school district is authorized to levy a fee, ... against any development project within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. [FN[4]] ... [¶] (b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, ... levied by the governing board of that school district pursuant to subdivision (a) ...."

> FN[4] Chapter 4.9 limits fees to $1.50 per square foot on residential construction and 25 cents per square foot on commercial construction, senior citizen housing, and mobilehome parks limited to older persons.

Rossmoor asserts these statutes are conflicting and we should resolve any ambiguity in favor of former section 53077.5, subdivision (a) because: (1) that section states explicitly it is to apply "notwithstanding any other provision of law"; (2) the legislative counsel issued an opinion in 1986 concluding that a school district could not require payment of school impact fees until the date of final inspection with respect to residential or commercial development, or the date the certificate of occupancy is issued; and (3) accepted principles of statutory construction dictate that former section 53077.5 should control. We disagree and affirm the trial court judgment.

In section 65995, enacted at the same time as section 53080, the Legislature forbade local agencies from imposing *any* fees or charges against a development project for the construction or reconstruction of school facilities. That function was specifically vested in the governing board of school districts as provided in section 53080. (See *California Bldg. Industry Assn. v. Governing Bd.* (1988) 206 Cal.App.3d 212, 224 [253 Cal.Rptr. 497].)***1608**

Section 65995 makes clear that the financing of school facilities by development fees is a matter of statewide concern and that the state has preempted the field: "[T]he Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject." (§ 65995, subd. (e).) Section 65995 is part of chapter 4.9 which is concerned exclusively with limits on imposition of school fees by school districts under section 53080.

(2a) Section 53080, subdivision (b) conditions a city or county's power to issue a building permit for any development upon certification by the applicable school district that any fees imposed under subdivision (a) of section 53080 have been paid. Former section 53077.5, on the other hand, governed local agencies in general, and clearly provided that fees imposed by such agencies on residential developments for the construction of public facilities could not be collected until the date of either the final inspection or issuance of the certificate of occupancy, whichever occurs last. [FN5]

> FN5 Former section 53077.5 subdivision (a) uses the mandatory word "shall" and contains the language, "notwithstanding any other provision of law." However, subdivision (b) of the same section provided that under certain specified conditions a local agency "may require the payment of those fees or charges at an earlier time ...."

Saddleback argues it does not fall within the designation "local agency." At the time in question, former section 53077.5, provided in subdivision (c), " 'Local agency,' as used in this section, means a county, city, or city and county, whether general law or chartered, or district. 'District' means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries." Saddleback claims school districts may be agencies of the state, but they are not formed pursuant to general law or special act for the "local performance of governmental or proprietary functions." Instead school districts are agencies of the state created by the Legislature under the authority of the Constitution for the local operation of the state school system. (See *Hall v. City of Taft* (1956) 47 Cal.2d 177, 181 [302 P.2d 574].)

Rossmoor points out that a 1986 legislative counsel's opinion states, "[I]t is our opinion that a school district is a 'district' under the definition set forth above and, accordingly, constitutes a 'local agency' for purposes of [former] Section 53077.6." We think the legislative counsel's analysis, which is unsupported by any applicable authority, is faulty.

Section 56036 defines district or special district in the same manner as did section 53077.5, and school districts are specifically excluded from the ***1609** definition. That section provides in part: " 'District' or 'special district' includes a county service area, but excludes all of the following: ... [¶] (4) A school district or a community college district."

We acknowledge the Legislature has not always been consistent in its definition of local agency or district, sometimes excluding and sometimes including school districts. (See § 66000.) Accordingly, we must look to the general principles of statutory construction to harmonize the seemingly conflicting provisions of section 53080 and former section 53077.5.

(3) Preeminent among statutory construction principles is the requirement that courts must ascertain the intent of the Legislature. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698 [170 Cal.Rptr. 817, 621 P.2d 856]; *De Young v. City of San Diego* (1983) 147 Cal.App.3d 11, 17-18 [194 Cal.Rptr. 722].) Further, legislation should be given a reasonable, commonsense interpretation consistent with the apparent purpose of the Legislature. In addition, legislation should be interpreted so as to give significance to every word, phrase and sentence of an act. And all parts of the legislation must be harmonized by considering the questioned parts in the context of the statutory framework taken as a whole. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224]; *McCauley v. City of San Diego* (1987) 190 Cal.App.3d 981, 992 [235 Cal.Rptr. 732].)

The Legislature specifically expressed its intent in enacting section 53080 in 1986. The section was a "response to the crisis of overcrowded school facilities caused by substantial development and population growth" in the state. (*North State Development Co. v. Pittsburgh Unified School Dist., supra,* 220 Cal.App.3d 1418, 1421.) [FN6]As Saddleback points out, there is a logical reason for requiring early payment of school impact fees, that is, construction of school facilities must keep pace with construction of new ***1610** residential developments so that new schools will be ready and available when needed by new homeowners. [FN7]

FN6 Section 7 of Statutes 1986, chapter 887, provides: "The Legislature finds and declares as follows: [¶] (a) Many areas of this state are experiencing substantial development and population growth, resulting in serious overcrowding in school facilities. [¶] (b) Continued economic development requires the availability of the school facilities needed to educate the state's young citizens. [¶] (c) In growing areas of this state, the lack of availability of the public revenues needed to construct school facilities is a serious problem, undermining both the education of the state's children and the continued economic prosperity of California. [¶] (d) For these reasons, a comprehensive school facilities finance program based upon a partnership of state and local governments and the private sector is required to ensure the availability of school facilities to serve the population growth generated by new development. [¶] (e) The Legislature therefore finds that the levying of appropriate fees by school district governing boards at the rates authorized by this act is a reasonable method of financing the expansion and construction of school facilities resulting from new economic development within the district."

FN7 We recognize the same may be said for other public facilities being built by local agencies, and such early funding is achievable under the provisions of subdivision (b) of section 66007, and was available under subdivision (b) of former section 53077.5.

It is also apparent that an interpretation favoring former section 53077.5 would render subdivision (b) of section 53080 somewhat meaningless, or at least lead to an absurd result. Cities or counties could not issue building permits without certification that school impact fees had been paid. Accordingly, projects would never be built, and fees, which could only be collected on completion, would never be collected.

Rossmoor asserts this confusion was corrected when section 66007, which retained subdivisions (a) and (b) of former section 53077.5, added subdivision (c) which provides in pertinent part, "If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner ... as a condition of issuance of the building permit, to execute a contract to pay the fee or charge ... within the time specified in subdivision (a)."

But we do not see how the enactment of this subdivision furthers Rossmoor's argument that collection of school impact fees were governed by former section 53077.5. Subdivision (c) of section 66007 merely gives local agencies another mechanism for enforcing collection of fees on residential developments.

More significant in our view is the addition of subdivision (c) to section 53080 and the enactment of section 53080.1. Pertinent here is subdivision (c) of section 53080.1 which provides, "Upon adopting or increasing a fee, ... pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee .... The school district governing board shall specify, pursuant to that notification, *whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.*" (Italics added.) Subdivision (c) was also added to section 53080 and provides: "If, pursuant to subdivision (c) of Section 53080.1, the governing board specifies that the fee, ... levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007, the restriction set forth in subdivision (b) ***1611** of this section does not apply. In that event, however, no city or county whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential development project absent certification by the appropriate school district of compliance by that development project with any fee, ... levied by the governing board of that school district pursuant to subdivision (a)."

(4) It is obvious the Legislature would not have given school districts the option of adopting the limits on collecting fees available under section 66007 if they were governed by that section in the first place. As was said in *Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289], "As a general proposition the courts have held that ' "The very fact that the prior law is amended demonstrates the intent to change the pre-existing law ...." ' [Citations.]" (See § 9605; *Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal.App.3d 497, 506 [113 Cal.Rptr. 539].)

(2b) In addition, a specific provision relating to a particular subject will prevail over a general provision even where the general statute is broad enough to encompass the subject of the particular legislation. (Civ. Code, § 3534; *Las Virgenes Mun. Wat. Dist. v. Dorgelo* (1984) 154 Cal.App.3d 481, 486 [201 Cal.Rptr. 266]; *Cavalier Acres, Inc. v. San Simeon Acres Community Services Dist.* (1984) 151 Cal.App.3d 798, 802 [199 Cal.Rptr. 4].)Section 53080, the specific statute, takes precedence over the general statute, former section 53077.5. Under the circumstances, the trial court properly decided Saddleback did not collect the school impact fees prematurely.

Since we affirm the judgment, Saddleback's cross-appeal is moot and is dismissed. The judgment is affirmed.

Moore, Acting P. J., and Crosby, J., concurred. ***1612**

Cal.App.4.Dist.
RRLH, Inc. v. Saddleback Valley Unified School Dist.
222 Cal.App.3d 1602, 272 Cal.Rptr. 529, 62 Ed. Law Rep. 274

END OF DOCUMENT

Stecks v. Young
Cal.App.4.Dist.
DAVID LLOYD STECKS et al., Plaintiffs and Appellants,
v.
CANDACE YOUNG et al., Defendants and Respondents.
No. D019564.

Court of Appeal, Fourth District, Division 1, California.
Sep 18, 1995.

SUMMARY

In an action for libel per se, slander per se, and intentional infliction of emotional distress, brought by the parents of defendant psychologist's schizophrenic patient after defendant informed child protective services of her concerns that plaintiffs were committing child abuse, the trial court sustained defendant's demurrer without leave to amend and entered judgment for defendant. The court found that defendant, as a mandatory reporter under the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.), had absolute immunity (Pen. Code, § 11172, subd. (a)), from civil and criminal liability for reporting known or suspected abuse. During therapy, plaintiff's daughter had reported several incidents of child abuse to defendant, implicating plaintiffs and others. Defendant had reported the incidents based solely upon information provided by the daughter. (Superior Court of San Diego County, No. N57611, Thomas Ray Murphy, Judge.)

The Court of Appeal affirmed. The court held that the trial court did not err in determining that defendant was protected with absolute immunity, under Pen. Code, § 11172, subd. (a). As a mandatory reporter, under Pen. Code, § 11166, subd. (a), defendant was required to report any known or suspected abuse. The Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.), is a comprehensive scheme of reporting requirements aimed at increasing the likelihood that child abuse victims are identified. In accordance with the fundamental purpose of the act, to protect children, a mandatory reporter's entitlement to immunity does not depend upon a factual determination of whether he or she harbored a reasonable suspicion of abuse at the time of reporting. Thus, defendant enjoyed absolute immunity regardless of whether her suspicion of abuse was reasonable. Moreover, even potentially irrelevant information about plaintiffs in defendant's report was immune. Finally, defendant did not lose her immunity even if she failed to submit her report within the statutory time frame. (Opinion by Haller, J., with Huffman, Acting P. J., and Nares, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Appellate Review § 128--Scope of Review--Function of Appellate Court-- Rulings on Demurrers. When an appeal arises from a dismissal following a demurrer, the reviewing court looks only to the plaintiff's complaint for relevant facts. The court accepts as true all properly pleaded allegations stated in the complaint and all facts appearing in exhibits attached to the complaint, giving such facts precedence over contrary allegations in the complaint.

(2) Infants § 16--Offenses Against Infants--Child Abuse and Neglect Reporting Act--Purpose of Act. The Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.) is a comprehensive scheme of reporting requirements aimed at increasing the likelihood that child abuse victims are identified. These statutes, all of which reflect the state's compelling interest in preventing child abuse, are premised on the belief that reporting suspected abuse is fundamental to protecting children. The objective has been to identify victims, bring them to the attention of the authorities, and, where warranted, permit intervention. Committed to the belief that reporting requirements protect children, the Legislature consistently has increased, not decreased, reporting obligations and has afforded greater, not less, protection to mandated reporters whose reports turn out to be unfounded.

(3a, 3b) Infants § 16--Offenses Against Infants--Child Abuse and Neglect Reporting Act--Mandated Reporters--Failure to Report.

Pen. Code, § 11166, subd. (a), which identifies mandated reporters, including health practitioners, and which defines the circumstances under which these individuals must report, affirmatively requires persons in positions where abuse is likely to be detected to report within specified time frames all suspected and known instances of child abuse to authorities for follow-up investigation. The failure to report can subject mandated reporters to both criminal prosecution and civil liability.

(4a, 4b, 4c) Infants § 16--Offenses Against Infants--Child Abuse Neglect Reporting Act--Psychologist's Absolute Immunity for Reporting Suspected Abuse.
In a libel action brought by the parents of defendant psychologist's patient after defendant informed child protective services of her concerns that plaintiffs were committing child abuse, the trial court did not err in sustaining defendant's demurrer, on the ground that defendant, as a mandatory reporter under the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.), had absolute immunity (Pen. Code, § 11172, subd. (a)). During therapy, plaintiff's daughter had reported several incidents of child abuse to defendant, implicating plaintiffs and others. Defendant reported the incidents based solely upon information provided by the daughter. Defendant's entitlement to immunity did not depend upon a factual determination of whether she harbored a reasonable suspicion of abuse when she made the report. Moreover, even potentially irrelevant information about plaintiffs in defendant's report was immune. Finally, defendant did not lose her immunity for failing to submit her report within the statutory time frame. If her report were treated as an "authorized" report (Pen. Code, § 11166, subd. (b)) as opposed to a "required" report (Pen. Code, § 11166, subd. (a)), the "authorized" report was not subject to a time requirement. Furthermore, given that immunity is a key ingredient in maintaining the act's integrity, the filing of an untimely report will not on its own destroy immunity.
[See 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 290.]
(5) Infants § 16--Offenses Against Infants--Child Abuse and Neglect Reporting Act--Purpose of Absolute Immunity Provision for Mandated Reporters.
The fundamental premise of the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.) is that reporting abuse protects children. The Legislature included absolute immunity from civil and criminal liability for mandated reporters, since, otherwise, professionals would be reluctant to report if they faced liability for inaccurate reports, and it is inconsistent to expose professionals to civil liability for failing to report and then expose them to liability where their reports prove false.

(6) Infants § 16--Offenses Against Infants--Child Abuse and Neglect Reporting Act--Absolute Immunity Provision for Mandated Reporters--Reasonable Suspicion of Abuse.
Under the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.), immunity for mandated reporters from civil and criminal liability attaches regardless of whether the reporter had a reasonable suspicion of child abuse. Otherwise, the immunity statute would be rendered virtually meaningless. There is no need for immunity when there can be no liability, as in the case of reports that are true or based upon objectively reasonable suspicion. The issue of the reasonableness of the reporter's suspicions would potentially exist in every reported case. The legislative scheme is designed to encourage the reporting of child abuse to the greatest extent possible to prevent further abuse. Reporters are required to report child abuse promptly and they are subject to criminal prosecution if they fail to report as required. Accordingly, absolute immunity from liability for all reports is consistent with that scheme.

(7) Infants § 16--Offenses Against Infants--Child Abuse and Neglect Reporting Act--Absolute Immunity Provision for Mandated Reporters--Required or Authorized Report.
The Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.) confers absolute immunity upon a mandated reporter whether the reporter supplies a "required" report (Pen. Code, § 11166, subd. (a)) or an "authorized" one (Pen. Code, § 11167, subd. (b)). It would be anomalous to conclude that the reporter's required report of suspected child abuse is privileged, but that the legislatively contemplated subsequent communications concerning the incident would expose the reporter to potential civil liability. Such an interpretation would render nugatory the statutory language extending the privilege to authorized reports and would frustrate the legislative purpose by resurrecting the precise damper on full reporting and cooperation that the legislative scheme was designed to eliminate. Thus, it is of no consequence whether a report is treated as required or authorized.

(8) Statutes § 39--Construction--Giving Effect to Statute--Conformation of Parts.
The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. Moreover,

every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.

COUNSEL

Gore, Grosse, Greenman & Lacy and Michael L. Klein for Plaintiffs and Appellants.

Lewis, D'Amato, Brisbois & Bisgaard, Jeffrey B. Barton, Joan M. Danielsen and James E. Friedhofer for Defendants and Respondents.

HALLER, J.

David and Nancy Steeks brought an action for libel per se, slander per se, and intentional infliction of emotional distress against psychologist Candace Young. The action concerned an oral and a written report *369 Young made to the child protective services regarding the Steckses and others in which she accused these individuals of child abuse and participation in cult activities. The reports were based upon information Young received from her patient, the Steckses' allegedly schizophrenic adult daughter.

Young demurred, contending she was entitled to absolute immunity pursuant to Penal Code [FN1] section 11172, subdivision (a). The trial court agreed and sustained the demurrer with leave to amend. After the Steckses filed a first amended complaint, Young filed a second demurrer, again asserting absolute immunity. The court sustained the demurrer without leave to amend and then entered judgment in Young's favor.

FN1 All statutory references are to the Penal Code.

On appeal, the Steckses maintain the immunity is inapplicable because (1) Young did not harbor a reasonable suspicion of abuse when she submitted the reports, (2) Young reported issues irrelevant to the prevention of child abuse, and (3) Young conveyed her reports in an untimely manner. Following the thoughtful and well-reasoned reported decisions that previously have interpreted the broadly written Child Abuse and Neglect Reporting Act (§ 11164 et seq.), we affirm the judgment. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [20 Cal.Rptr. 321, 369 P.2d 937].)

Facts

(1) Because this appeal arises from a dismissal following a demurrer, we look only to the Steckses' first amended complaint for relevant facts. We accept as true all properly pleaded allegations stated in the complaint. (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 702 [263 Cal.Rptr. 119, 780 P.2d 349].) We also accept as true all facts appearing in exhibits attached to the complaint and give such facts precedence over contrary allegations in the complaint. (*Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627 [272 Cal.Rptr. 623].) [FN2]

FN2 The Steckses attached the October 16, 1991, letter, which forms the gravamen of their allegations, as an exhibit to the first amended complaint and incorporated it by reference.

Young is a licensed marriage, family, and child counselor with a doctorate in clinical psychology. She is a member of the Ritual Abuse Task Force for the San Diego County Commission on Children and Youth. In September 1988, she began treating the Steckses' 29-year-old daughter (hereafter patient), who had been diagnosed as schizophrenic and suffering from multiple personality disorder. While in psychotherapy sessions, patient reported that her mother and father had sexually molested her when she was a child, *370 practiced satanic worship, abused alcohol and marijuana, and participated in human and animal sacrifice and brainwashing.

During treatment, patient also told Young she was concerned about the welfare and safety of her niece and nephew, particularly her niece, whom she thought might be a victim of sexual molestation by patient's brother-in-law. In April 1990, patient, but not Young, informed child protective services of her concerns. In September 1991, patient informed Young that she had information suggesting her nephew was scheduled to be sacrificed at a cult ritual celebration of the fall equinox. Patient again implicated the children's father in the planned cult ritual.

After patient told Young of the anticipated ritualistic sacrifice, Young spoke directly with Wells Gardner of child protective services. On October 16, 1991, Young, at Gardner's request, sent a letter to Gardner in which she conveyed her concerns regarding the children and why she thought patient should be believed. Before sending the letter, Young had never met or communicated with the Steckses, the children, or the children's parents, relying instead solely upon information patient provided. The letter was seen and

read by Gardner, others associated with child protective services, medical practitioners and individuals within the criminal justice system.

The letter, which according to the Stecksses does not "suggest" they posed any danger to their grandchildren, included serious accusations about the Stecksses' relationship with patient when she was a child, their involvement in cult activities, and Young's assessment that neither of the Stecksses would be a proper caretaker for their grandchildren. The Stecksses contend the letter and all oral representations concerning them were false and that Young made these statements with "a complete absence of reasonable suspicion" they were true. Further, they allege Young's actions have harmed their good reputations and caused them damages, including mental and physical distress. [FN3]

FN3 From the record, it is clear that child protective services conducted some level of investigation concerning the Stecksses' grandchildren, but the record is silent as to what form the investigation took. Although the parties do not reference the filing of a dependency petition or any criminal proceedings, the Stecksses did inform the trial court at oral argument on January 22, 1993, that "these two children ... have long since been returned to their parents."

Discussion

For more than 30 years, California has used mandatory reporting obligations as a way to identify and protect child abuse victims. In 1963, the Legislature passed former section 11161.5, its first attempt at imposing upon *371 physicians and surgeons the obligation to report suspected child abuse. Although this initial version and later ones carried the risk of criminal sanctions for noncompliance, the state Department of Justice estimated in November 1978 that only about 10 percent of all cases of child abuse were being reported. (*Krikorian v. Barry* (1987) 196 Cal.App.3d 1211, 1216-1217 [242 Cal.Rptr. 312].)

(2) Faced with this reality and a growing population of abused children, in 1980 the Legislature enacted the Child Abuse Reporting Law (§ 11165 et seq.), a comprehensive scheme of reporting requirements "aimed at increasing the likelihood that child abuse victims are identified." (*James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 254 [21 Cal.Rptr.2d 169], citing *Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 90 [270 Cal.Rptr. 379].) The Legislature subsequently renamed the law the Child Abuse and Neglect Reporting Act (Act) (§ 11164). (Stats. 1987, ch. 1444, § 1.5, p. 5369.)

These statutes, all of which reflect the state's compelling interest in preventing child abuse, are premised on the belief that reporting suspected abuse is fundamental to protecting children. The objective has been to identify victims, bring them to the attention of the authorities, and, where warranted, permit intervention. (*James W. v. Superior Court, supra*, 17 Cal.App.4th at pp. 253-254.) Committed to the belief that reporting requirements protect children, the Legislature consistently has increased, not decreased, reporting obligations and has afforded greater, not less, protection to mandated reporters whose reports turn out to be unfounded.

Against this background, we examine the relevant provisions of the Act.

(3a) Section 11166, subdivision (a) identifies mandated reporters, including health practitioners, [FN4] and defines the circumstances under which these individuals must report. This provision affirmatively "requires persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation." (*Ferraro v. Chadwick, supra*, 221 Cal.App.3d at p. 90.) Suspected abuse includes circumstances where "it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse." (§ 11166, subd. (a).) The incident must be reported "as soon as practically possible by telephone," followed by a written report "within 36 hours of receiving the information ...." (*Ibid.*) Failure to comply is punishable as a misdemeanor. (§ 11172, subd. (e).) *372

FN4 Young, a licensed marriage, family, and child counselor, is a health practitioner within the meaning of section 11165.8.

Section 11167, subdivision (b) authorizes communications with child abuse protective agencies and provides that "[i]nformation relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child

abuse."

Section 11172, subdivision (a) establishes immunity. It "cloaks mandated reporters with immunity from civil and criminal liability for making any report 'required or authorized' by the Act." (*Ferraro v. Chadwick, supra*, 221 Cal.App.3d at pp. 90-91.) [FN5] Subdivision (c) of section 11172 entitles mandated reporters who incur legal fees defending a legal action brought despite the immunity, to recover their legal fees from the state Board of Control.

FN5 This statute also affords immunity to nonmandated reporters who report known or suspected child abuse, "unless it can be proven that a false report was made and the [nonmandated reporter] knew that the report was false or was made with reckless disregard of the truth or falsity of the report...." (§ 11172, subd. (a).)

(4a) The Steckses contend that Young's entitlement to immunity depends upon a factual determination of whether she harbored a reasonable suspicion of abuse when she reported to child protective services. While the Steckses concede that as a health practitioner Young must comply with the Act's mandatory reporting provisions, they argue her immunity is not absolute. From their perspective, they have the right to prove up the accusations contained in the first amended complaint because the Act does not protect Young from preparing negligent or knowingly false reports.

(5) As respondent argues convincingly, however, the Steckses' position is contrary to existing precedent and is inconsistent with the Act's fundamental premise-reporting protects children. It also disregards those factors which eventually led the Legislature to include absolute immunity within the Act: (1) professionals will be reluctant to report if they face liability for inaccurate reports, and (2) it is inconsistent to expose professionals to civil liability for failing to report [FN6] and then expose them to liability where their reports prove false. As the Legislature recognized, accurate reports of abuse do not lead to civil lawsuits. Only those which cannot be confirmed, are unfounded, or, worse yet, are intentionally false, do. Faced with a choice between absolute immunity, which would promote reporting but preclude redress to those harmed by false accusations, and conditional immunity, which would limit reporting but allow redress, the Legislature, through various amendments, ultimately selected absolute immunity. (*Storch v. Silverman* (1986) 186 Cal.App.3d 671, 679-681 [231 Cal.Rptr. 27].)*373

FN6 See *Landeros v. Flood* (1976) 17 Cal.3d 399 [131 Cal.Rptr. 69, 551 P.2d 389, 97 A.L.R.3d 324].

(6) The appellate courts of this state, including our own court, have previously evaluated the Act's immunity provision and, in each case, soundly rejected the argument that immunity does not attach unless "reasonable suspicion" existed. As succinctly stated by the Court of Appeal in *Storch*, which conducted a comprehensive analysis of (1) the statutory language, (2) the legislative purposes, and (3) the historical background of the statutory immunities:

"Plaintiffs' interpretation, however, renders the immunity statute virtually meaningless. There is no need for immunity when there can be no liability, as in the case of reports that are true or based upon objectively reasonable suspicion.... The issue of the reasonableness of the reporter's suspicions would potentially exist in every reported case.

"The legislative scheme is designed to encourage the reporting of child abuse to the greatest extent possible to prevent further abuse. Reporters are required to report child abuse promptly and they are subject to criminal prosecution if they fail to report as required. Accordingly, absolute immunity from liability for all reports is consistent with that scheme." (*Storch v. Silverman, supra*, 186 Cal.App.3d at pp. 678-679, fn. omitted; accord, *Krikorian v. Barry, supra*, 196 Cal.App.3d at p. 1223; *Thomas v. Chadwick* (1990) 224 Cal.App.3d 813, 819-820 [274 Cal.Rptr. 128]; *Ferraro v. Chadwick, supra*, 221 Cal.App.3d at pp. 90-92; see also *James W. v. Superior Court, supra*, 17 Cal.App.4th 246 [where we declined to apply immunity to the post reporting activities of a psychologist and foster parents, and reaffirmed that mandated reporters are entitled to absolute immunity even if their reports are negligently prepared or intentionally false].)

The Steckses insist cases such as *Storch*, *Krikorian*, *Ferraro* and *Thomas* were wrongly decided. We disagree and decline to forge a course inconsistent with the thoughtful reasoning and holdings of these cases. [FN7]

FN7 To the extent the Steckses contend *James W. v. Superior Court, supra,* 17 Cal.App.4th 246 casts doubt on the validity of the absolute immunity rule, they read the case too broadly. *James W.* involved activities that were neither required nor authorized under the Act. Our court found only that section 11172 "... does not apply to activities that continue more than two years after the initial report of abuse by parties who are not acting as reporters." (17 Cal.App.4th at p. 253.)

(7) In following precedent, we are also mindful that the Act confers absolute immunity upon a mandated reporter whether the reporter supplies a "required" report (§ 11166, subd. (a)) or an "authorized" one (e.g., § 11167, subd. (b)). (*Ferraro v. Chadwick, supra,* 221 Cal.App.3d at p. 94.) As we observed in *Thomas v. Chadwick, supra,* 224 Cal.App.3d at p. 822: "It would be anomalous to conclude that the reporter's 'required' report of suspected child abuse is privileged, but that the legislatively contemplated subsequent *374 communications concerning the incident would expose the reporter to potential civil liability. Such an interpretation would render nugatory the statutory language extending the privilege to 'authorized reports,' and would frustrate the legislative purpose by resurrecting the precise damper on full reporting and cooperation which the legislative scheme was designed to eliminate." Thus, it is of no consequence whether we treat Young's oral communication and written report as "required" or "authorized."

(4b) In a related argument, the Steckses contend immunity is inapplicable because Young's statements about them were irrelevant to the prevention of child abuse. Relying on the portion of their first amended complaint that alleges, "[t]he letter does not suggest that the [grandchildren] were in any danger from their grandparents," the Steckses argue the information concerning them in Young's letter is beyond the scope of immunized conduct.

Preliminarily, we note other contrary allegations belie the Steckses' argument. The October 16, 1991, letter, which appellants attach as an exhibit and incorporate by reference, states, "[t]his letter is in response to your request to provide further information regarding my concerns for the [grandchildren] ... [and why] I would have grave concerns about the children being placed with either the maternal or paternal grandparents."

Moreover, regardless of whether the information about them in Young's letter was relevant, the Steckses' position that the Act does not immunize irrelevant information undermines, rather than supports, the Act's key premise-namely that reporting protects children. Inevitably, were we to accept their position, we would simply invite protracted litigation concerning a factual determination of which statements were or were not "relevant." Because such an approach would discourage reporting, it is inconsistent with the legislative scheme and the Act's objectives.

Finally, the Steckses maintain that even if Young's reporting activities are protected, Young lost her immunity because her written report was not submitted "within 36 hours of receiving the information concerning the incident." [FN8](§ 11166, subd. (a).) (3b) As noted, section 11166 subdivision (a) creates an affirmative obligation upon designated professionals to report known and suspected child abuse and to do so within specified time frames. The failure to report can subject mandated reporters to both criminal prosecution (§ 11172 subd. (e)) and civil liability. (*Landeros v. Flood, supra,* 17 Cal.3d 399.) *375

FN8 The Steckses do not allege the date on which Young orally reported to child protective services or how much time transpired between Young receiving the information from patient and talking with Wells Gardner. Likewise, they do not argue that the initial report was untimely.

By contrast, once the report is made, immunity attaches. (§ 11172 subd. (a).) To suggest, as the Steckses do, that untimely reports are not protected, is inconsistent with the language of the statute and legislative objectives. (8) "The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citations.] Moreover, 'every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.' [Citation.]" (*Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645 [335 P.2d 672].) If we were to adopt the Steckses' position, tardy mandated reporters with pertinent information would be reluctant to report out of fear that their actions might lead to litigation-a result at variance with the purposes of the Act. (*Ferraro v. Chadwick, supra,* 221 Cal.App.3d at p. 94.)

(4c) The Steckses' untimeliness argument is similarly unavailing if the October 16, 1991, letter is treated as an "authorized" report (§ 11166, subd. (b)) as opposed to a "required" report (§ 11166, subd. (a)). Unlike "required" reports, "authorized" reports do not reference a time requirement. [FN9]

FN9 The appellants' reliance on *Searcy v. Auerbach* (9th Cir. 1992) 980 F.2d 609, where a federal appeals court, applying California law, concluded that a clinical psychologist was not entitled to immunity because he failed to comply with conditions specified in the Act, is misplaced. There, unlike here, the report in question was prepared at the request of and given to a father who suspected his child was the victim of sexual molest. The father gave the report to the police, who used it to initiate an investigation against the child's mother.

Without exception, our appellate courts have concluded that immunity is a key ingredient in maintaining the Act's integrity and thus have rejected efforts aimed at narrowing its protection. While we recognize that unfounded reports can lead to serious, sometimes devastating consequences, and we have great sympathy for those who are wrongfully accused, as we noted in *Thomas v. Chadwick, supra*, "[i]n this war on child abuse the Legislature selected absolute immunity as part of its arsenal. This value choice is clearly within the province of the Legislature. We cannot defuse this chosen weapon on the ground that its effect is sometimes ill when its general purpose is good." (*Thomas v. Chadwick, supra*, 224 Cal.App.3d at p. 827.)

Having reaffirmed prior holdings affording absolute immunity to those individuals the Act designates as mandated reporters, we express our concern that factually this case presses the outer limits of immunity. Typically, mandated reporters base their reports upon personal interviews with or observations of the alleged victim or abuser or upon information derived from other professionals treating or investigating the alleged abuse. By contrast, here the mandated reporter allegedly trusted the accusations of a purportedly schizophrenic patient, who had no personal knowledge that *376 the children were being abused, and conveyed those accusations to the authorities.

In circumstances where the mandated reporter is not drawing upon personal professional assessments of the victim or abuser or is not relying upon other trained professionals who have made such assessments, we submit that the application of absolute immunity warrants further reflection by the Legislature. Where such reports turn out to be false, the Legislature may deem it appropriate to apply qualified immunity and to permit recovery where the wrongfully accused person can establish that the report was known to be false or made in reckless disregard of the truth. However, absent a change in the statute, the trial court properly sustained the demurrer without leave to amend.

Disposition

Affirmed.

Huffman, Acting P. J., and Nares, J., concurred.
Appellants' petition for review by the Supreme Court was denied December 14, 1995. *377

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Williams v. Garcetti
Cal. 1993.
GARY WILLIAMS et al., Plaintiffs and Appellants,
v.
GILBERT GARCETTI, as District Attorney, etc., et al., Defendants and Respondents.
No. S024925.

Supreme Court of California
Jul 1, 1993.

SUMMARY

Plaintiff taxpayers filed a complaint for injunctive and declaratory relief against the county district attorney and the city attorney, seeking to halt the enforcement of an amendment to Pen. Code, § 272 (contributing to dependency or delinquency of minor), which imposes upon parents the duty to "exercise reasonable care, supervision, protection, nd control over their minor children." Plaintiffs alleged that enforcement would constitute a waste of public funds inasmuch as the amendment was unconstitutionally vague and overbroad on its face and impinged on the right to privacy. On cross-motions for summary judgment, the trial court granted summary judgment in favor of defendants. (Superior Court of Los Angeles County, No. C731376, Ronald M. Sohigian, Judge.) The Court of Appeal, Second Dist., Div. One, No. B056250, reversed, determining that the amendment was unconstitutionally vague.

The Supreme Court reversed the judgment of the Court of Appeal with directions to affirm the judgment of the trial court. The court held that the amendment is not unconstitutionally vague, since it provides adequate notice to parents with regard to potential criminal liability for failure to supervise and control their children, and provides adequate standards for its enforcement and adjudication in order to avoid the danger of arbitrary and discriminatory enforcement. The court also held that the amendment is not unconstitutionally overbroad. (Opinion by Mosk, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Constitutional Law § 113--Due Process--Substantive Due Process--Statutory Vagueness.
The constitutional interest implicated in questions of statutory vagueness is that no person be deprived of life, liberty, or property without due process of law, as assured by both the federal Constitution (U.S. Const., 5th and 14th Amends.) and the California Constitution (Cal. Const., art. I, § 7). Under both Constitutions, due process of law in this context requires two elements. A criminal statute must be definite enough to provide (1) a standard of conduct for those whose activities are proscribed, and (2) a standard for police enforcement and for ascertainment of guilt. Indeed, the requirement of guidelines for law enforcement is the more important aspect of the vagueness doctrine. The reason for its importance is that where the Legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep that allows police officers, prosecutors, and juries to pursue their personal predilections.
[See 1 **Witkin & Epstein,** Cal. Criminal Law (2d ed. 1988) § 43 et seq.]
(2) Constitutional Law § 113--Due Process--Substantive Due Process--Statutory Vagueness--Standard of Review.
Courts evaluate the specificity of a statute according to the following standards: Vague laws offend several important values. First, because it is assumed that a person is free to steer between lawful and unlawful conduct, laws must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he or she may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to police officers, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. The starting point of the court's analysis is the strong presumption that legislative enactments must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. A statute should be sufficiently certain so that a person may

know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language.

(3a, 3b, 3c, 3d, 3e, 3f, 3g) Parent and Child § 14--Custody and Control--Criminal Liability for Failure to Supervise and Control Minor Child--Validity of Statute--Vagueness:Delinquent, Dependent, and Neglected Children § 38--Contributing to Delinquency.
An amendment to Pen. Code, § 272, which imposes upon parents the duty to "exercise reasonable care, supervision, protection, and control over their minor children," is not unconstitutionally vague. The amendment incorporates the definitions and limits of parental duties that have long been a part of California dependency law and tort law. The terms "supervision" and "control" suggest an aspect of the parental duty that focuses on the child's actions and their effect on third persons. Implicit in the statute's original language was the duty to prevent the child from from engaging certain delinquent acts. The amendment provides more explicitly that parents violate § 272 when their failure to reasonably supervise and control results in the child's delinquency. Thus, the amendment provides adequate notice with regard to potential criminal liability for failure to supervise and control their children because (1) it incorporates well-established tort law, and (2) it imposes criminal liability only when the parent engages in conduct that so grossly departs from the standard of care as to amount to criminal negligence. Further, the incorporation of preexisting tort concepts and the requirement of a causative link between a parent's criminal negligence and the child's delinquency provide standards for enforcement and adjudication of the amendment thereby minimizing the danger of arbitrary and discriminatory enforcement.
[See Cal.Jur.3d (Rev), Criminal Law, § 967; 2 Witkin & Epstein, Cal. Criminal Law (2d ed. 1988) § 836.]
(4) Statutes § 13--Amendment--Purpose--Change in law or Clarification.
Where changes have been introduced to a statute by amendment, it must be assumed the changes have a purpose. That purpose is not necessarily to change the law. While an intention to change the law is usually inferred from a material change in the language of the statute, a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.

(5) Statutes § 21--Construction--Legislative Intent--Motive of Individual Legislator.
In construing a statute, a court does not consider the motives or understandings of an individual legislator even if he or she authored the statute.

(6) Parent and Child § 14--Custody and Control--Duty to Prevent Minor Child From Harming Others.
California law finds a special relationship between parent and child, and accordingly places upon a parent a duty to exercise reasonable care to control his or her minor child so as to prevent it from intentionally harming others or conducting itself in a way that creates an unreasonable risk of bodily harm to others, if the parent (a) knows or has reason to know that he or she has the ability to control the child, and (b) knows or should know of the necessity and opportunity for exercising such control.

(7) Statutes § 45--Construction--Presumptions--Legislature's Knowledge of Existing State of Law.
When construing a statute, a court assumes that, in passing the statute, the Legislature acted with full knowledge of the state of the law at the time.

(8) Constitutional Law § 113--Due Process--Substantive Due Process--Statutory Vagueness--Difficulty in Determining Statute's Applicability to Marginal Offense.
Statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language.

(9) Criminal Law § 8--Mental State--Criminal Negligence.
In the criminal context, ordinary negligence sufficient for recovery in a civil action will not suffice; to constitute a criminal act the defendant's conduct must go beyond that required for civil liability and must amount to a gross or culpable departure from the required standard of care.

(10a, 10b) Constitutional Law § 113--Due Process--Substantive Due Process--Statutory Overbreadth.
A challenge that a statute is overbroad implicates the constitutional interest in due process of law (U.S. Const., 5th and 14th Amends.; Cal. Const., art. 1, § § 7, subd. (a), 24.). The overbreadth doctrine provides that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. However, a facial overbreadth

hallenge is difficult to sustain. Application of the overbreadth doctrine is employed sparingly and only as a last resort. Consequently, to justify a conclusion of facial overbreadth, the overbreadth of a statute must not only be real, but must be substantial as well.

(11a, 11b) Parent and Child § 14--Custody and Control--Criminal Liability for Failure to Supervise and Control Minor Child--Validity of Statute--Overbreadth:Delinquent, Dependent, and Neglected Children § 38--Contributing to Delinquency.
An amendment to Pen. Code, § 272 (contributing to dependency or delinquency of minor), which imposes upon parents the duty to "exercise reasonable care, supervision, protection, and control over their minor children," is not unconstitutionally overbroad on its face. Although parties challenging the amendment asserted that it infringed on the right of intimate family association protected by both the federal and state Constitutions, the assertions lacked the particularity necessary to find a statute overbroad. Moreover, the amendment is not standardless; it incorporates the definition and limits of the parental tort duty of supervision and control. That definition and those limits guard against any excessive sweep by the criminal prohibition. Since the challengers did not show that a substantial number of instances exist in which the amendment cannot be applied constitutionally, the amendment could not be considered substantially overbroad, and whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations involved.

(12) Constitutional Law § 113--Due Process--Substantive Due Process--Statutory Overbreadth--Rights Protected.
The concept of personal liberties and fundamental human rights entitled to protection against overbroad intrusion or regulation by government extends to basic liberties and rights not explicitly listed in the Constitution, such as the right to marry, establish a home and bring up children; the right to educate one's children as one chooses; and the right to privacy and to be let alone by the government in the private realm of family life.

COUNSEL
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James K. Hahn, City Attorney, Maureen Siegel, Assistant City Attorney, Debbie Lew and R. Bruce Coplen, Deputy City Attorneys, Ira Reiner and Gilbert I. Garcetti, District Attorneys, Thomas P. Higgins, Deputy District Attorney, Chase, Rotchford, Drukker & Bogust, Ronald A. Dwyer, John A. Daly and David F. Link for Defendants and Respondents.
MOSK, J.
Penal Code section 272 (hereafter section 272) provides that every person who commits any act or omits any duty causing, encouraging, or contributing to the dependency or delinquency of a minor is guilty of a misdemeanor. A 1988 amendment thereto (hereafter the amendment) provides that for the purposes of this section, parents or guardians "shall have the duty to exercise reasonable care, supervision, protection, and control" over their children. We granted review in this case to determine whether on *566 its face the amendment is so vague or overbroad as to violate constitutional due process requirements. As will appear, we conclude that the amendment withstands challenge on the grounds of both vagueness and overbreadth, and we therefore reverse the judgment of the Court of Appeal.

I. Facts and Procedural History

For decades there has been some form of statutory prohibition against the conduct known as "contributing to the delinquency of a minor." [FN1] Section 272 is the most recent of these provisions, although its "contributing to delinquency" title is incomplete because it explicitly applies not only to delinquency (see Welf. & Inst. Code, § § 601 [habitually disobedient or truant minors], 602 [minors who commit crimes]) but also to dependency (see *Id.*, § 300 [minors within the jurisdiction of juvenile courts by reason of physical, emotional, or sexual abuse, or neglect, among other factors]).

FN1 See, e.g., Statutes 1909, chapter 133, section 26, page 225; Statutes 1915, chapter 631, section 21, page 1246; Statutes 1937, chapter 369, section 702, page 1033; Statutes 1961, chapter 1616, section 3, page 3503.

Between 1979 and 1988 section 272 provided, in relevant part: "Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Sections 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto ... is guilty of a misdemeanor ...." In 1988 the Legislature appended a sentence to section 272: "For purposes of this section, a parent or legal guardian to any person under the age

of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child." (Stats. 1988, ch. 1256, § 2, p. 4182.) This amendment is the object of the present lawsuit.

As part of the bill that included the amendment, the Legislature established a parental diversion program. (Pen. Code, § 1001.70 et seq.) Under specified circumstances the probation department may recommend the diversion of parents or guardians (hereafter collectively referred to as parents) charged under section 272 to an education, treatment, or rehabilitation program prior to trial. Satisfactory completion of the program results in dismissal of the criminal charges.

Plaintiffs, as taxpayers, filed a complaint for injunctive and declaratory relief to halt the enforcement of the amendment, claiming it would constitute a waste of public funds. (Code Civ. Proc., § 526a.)They named as defendants Ira Reiner, as Los Angeles County District Attorney, and James K. *567 Hahn, as Los Angeles City Attorney. (Gilbert Garcetti has since succeeded Reiner as district attorney.) The grounds of the complaint were that the amendment was unconstitutionally vague, overbroad, and an impingement on the right to privacy.

Both sides moved for summary judgment. The trial court granted summary judgment for defendants, concluding that the amendment was neither vague nor overbroad and that plaintiffs lacked standing to challenge it in any case.

Plaintiffs appealed. Reversing the judgment, the Court of Appeal first held that the trial court erred on the question of standing and that plaintiffs had standing as taxpayers. [FN2] On the merits, the court struck down the amendment as unconstitutionally vague, expressly declining to reach the question of its overbreadth. [FN3]

FN2 Defendants did not challenge plaintiffs' standing on appeal, nor do they do so before this court.

FN3 The trial court did not rule on the privacy claim, and plaintiffs did not raise the point on appeal.

II. Vagueness

(1a) The constitutional interest implicated in questions of statutory vagueness is that no person be deprived of "life, liberty, or property without due process of law," as assured by both the federal Constitution (U.S. Const., Amends. V, XIV) and the California Constitution (Cal. Const., art. I, § 7). Under both Constitutions, due process of law in this context requires two elements: a criminal statute must " 'be definite enough to provide (1) a standard of conduct for those whose activities are proscribed and (2) a standard for police enforcement and for ascertainment of guilt.' " (*Walker v. Superior Court* (1988) 47 Cal.3d 112, 141 [253 Cal.Rptr. 1, 763 P.2d 852]; see also *Kolender v. Lawson* (1983) 461 U.S. 352, 357 [75 L.Ed.2d 903, 908-909, 103 S.Ct. 1855].)

(2) We evaluate the specificity of the amendment according to the following standards: " 'Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and **568 juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.' " (*Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 763 [221 Cal.Rptr. 779, 710 P.2d 845], quoting *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-109 [33 L.Ed.2d 222, 227-228, 92 S.Ct. 2294], fns. omitted.)

The starting point of our analysis is "the strong presumption that legislative enactments 'must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. [Citations.] A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language.' " (*Walker v. Superior Court, supra*, 47 Cal.3d at p. 143.)

A. *Notice*

(3a) According to the foregoing principles, the amendment is not sufficiently specific unless a parent of ordinary intelligence would understand the nature of the duty of "reasonable care, supervision, protection, and control" referred to therein, as well as

what constitutes its omission. Plaintiffs contend the amendment changed the law by creating a new-and impermissibly vague-parental duty as a basis for criminal liability. Defendants reply that the amendment did not change the law; rather, it merely clarified the statute's application to an existing parental duty. [FN4]

FN4 In either case it is clear that parents have always been liable for contributing to the delinquency of a minor under section 272 and its predecessors. Originally the statute provided for liability of "the parent or parents, legal guardian or person having the custody of such child, or any other person ...." (Stats. 1909, ch. 133, § 26, p. 225; cf. *In re Sing* (1910) 14 Cal.App. 512, 514 [112 P. 582] ["any other person" not limited to person standing in loco parentis to minor].) This was later amended simply to "[a]ny person" (Stats. 1913, ch. 673, § 28, p. 1303) and is now "[e]very person" (§ 272).

(4) " 'Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1337 [283 Cal.Rptr. 893, 813 P.2d 240].) That purpose is not necessarily to change the law. "While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute." (*Martin v. California Mut. B. & L. Assn.* (1941) 18 Cal.2d 478, 484 [116 P.2d 711].)

(3b) In support of their contention that the purpose of the amendment was to clarify existing law and facilitate prosecution of parents under *569 section 272, defendants offer a declaration to this effect by the legislative assistant to the principal author of the legislation that included the amendment. This declaration is not dispositive of the amendment's purpose. (5) In construing a statute "we do not consider the motives or understandings of an individual legislator even if he or she authored the statute." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 801, fn. 12 [268 Cal.Rptr. 753, 789 P.2d 934]; accord, *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589-590 [128 Cal.Rptr. 427, 546 P.2d 1371].)

(3c) We therefore turn to the statutory context as a sign of legislative purpose. The Legislature enacted the amendment and the related parental diversion program as part of the Street Terrorism Enforcement and Prevention Act, the premise of which was that "the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods." (Stats. 1988, ch. 1256, § 1, p. 4179.) The act included measures establishing criminal penalties for gang participation and allowing sentence enhancements for gang-related conduct; defining certain buildings in which gang activities take place as nuisances subject to injunction, abatement, or damages; and prohibiting terrorist threats of death or great bodily injury.

Viewed in the context of the act, i.e., as part of its broad scheme to alleviate the problems caused by street gangs, the amendment to section 272 and the parental diversion program appear intended to enlist parents as active participants in the effort to eradicate such gangs. [FN5] Because the legislative history of the amendment is sparse, confined largely to the declaration *570 described above, we cannot rule out either plaintiffs' interpretation that the Legislature intended to enlarge the scope of parents' criminal liability or defendants' view that the Legislature merely clarified its scope. But it is not necessary for us to decide this question, for in either case our inquiry is the same: whether a parental duty of "reasonable care, supervision, protection, and control" is sufficiently certain to meet constitutional due process requirements. We conclude that it is because it incorporates the definitions and the limits of parental duties that have long been a part of California dependency law and tort law.

FN5 Our Legislature is not unique in addressing the problem of juvenile delinquency by making a parent criminally liable when the parent's failure to supervise or control a child results in the child's delinquency. "Holding parents responsible for juvenile delinquency is not a new concept. Colorado enacted the first law holding parents criminally liable for their children's delinquent acts in 1903." (Note, *Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of Their Children* (1991) 44 Vand.L.Rev. 441, 446.) At present, a New York statute provides: "A person is guilty of

> endangering the welfare of a child when: ... [¶] [b]eing a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an 'abused child,' a 'neglected child,' a 'juvenile delinquent' or a 'person in need of supervision' ...." (N.Y. Penal Law, § 260.10, subd. (2) (Lawyers Coop. 1993); see *People v. Scully* (1987) 134 Misc.2d 906 [513 N.Y.S.2d 625, 627] [statute not void for vagueness as applied]; *People v. Bergerson* (1966) 17 N.Y.2d 398 [271 N.Y.S.2d 236, 239-240, 218 N.E.2d 288] [predecessor statute not void for vagueness].) A similar Kentucky statute provides: "A parent, guardian or other person legally charged with the care or custody of a minor is guilty of endangering the welfare of a minor when he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming a neglected, dependent or delinquent child." (Ky. Rev. Stat. Ann., § 530.060, subd. (1) (Michie 1992).)

Plaintiffs do not dispute that parents' legal responsibilities in regard to the "care" and "protection" of their children-focusing on forces external to the child that affect the child's own welfare-are well established and defined. For example, Welfare and Institutions Code section 300 contains a lengthy list of conditions under which a minor can be removed from the custody of a parent and declared a dependent child of the court. [FN6] We agree with the Court of Appeal that section 300 provides guidelines sufficiently specific to delineate the circumstances under which a child will qualify for dependent status and thus to define the parental duty of care and protection that would prevent the occurrence of those circumstances.

> FN6 These conditions include: "(a) The minor has suffered ... serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. ... [¶] (b) The minor has suffered ... serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor.... [¶] (c) The minor is suffering serious emotional damage ... as a result of the conduct of the parent or guardian .... [¶] (d) The minor has been sexually abused ... by his or her parent or guardian or a member of his or her household .... [¶] (e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. ... [¶] ... [¶] (g) The minor has been left without any provision for support .... [¶] ... [¶] (i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household ...."

Accordingly, we confine the balance of our analysis to section 272 as applied to juvenile delinquency through Welfare and Institutions Code sections 601 and 602, and to the "supervision" and "control" elements of the duty identified in the amendment.

The terms "supervision" and "control" suggest an aspect of the parental duty that focuses on the child's actions and their effect on third parties. This aspect becomes plain when the amendment is read in conjunction with Welfare and Institutions Code sections 601 and 602. Section 601, subdivision (a), brings within the jurisdiction of the juvenile court any minor who, inter alia, "violated any ordinance of any city or county of this state establishing a curfew ...." Subdivision (b) of section 601 brings within *571 the jurisdiction of the juvenile court minors for whom "the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities ...." Section 602 brings within the jurisdiction of the juvenile court any minor who "violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime ...."

According to its preamendment language, section 272 thus imposes misdemeanor liability on any person whose act or omission causes or encourages a child to violate a curfew, be habitually truant, or commit a crime-i.e., to engage in delinquent acts. Implicit in this language is the duty to make a reasonable effort to prevent the child from so doing; the breach of that duty violates section 272 only when the person "causes or tends to cause or encourage" the child's delinquency. The amendment here at issue provides more explicitly that *parents* violate section 272 when they omit to perform their duty of reasonable

supervision" and "control" and that omission results in the child's delinquency. Therefore, the Legislature must have intended the "supervision" and "control" elements of the amendment to describe parents' duty to reasonably supervise and control their children so that the children do not engage in delinquent acts.

Parents have long had a duty to supervise and control [FN7] their children under California tort law. (See, e.g., *572 *Singer v. Marx* (1956) 144 Cal.App.2d 637, 644 [301 P.2d 440] ["[T]he parent has a special power of control over the conduct of the child, which he is under a duty to exercise reasonably for the protection of others."].) In adding the language of "supervision" and "control" to section 272, the Legislature was thus not imposing a new duty on parents but simply incorporating the definition and limits of a traditional duty.

> FN7 We note that terms similar to "supervision" and "control" have also been used for some time in dependency law. Indeed, the version of Welfare and Institutions Code section 300, subdivision (a), in effect before, during, and for three months after the enactment of the amendment, referred to "proper and effective parental care or control." (Stats. 1986, ch. 1122, § 2, p. 3976; language changed by Stats. 1987, ch. 1485, § 4, p. 5603, operative Jan. 1, 1989.) Defendants urge that the established meaning of the term "control" in dependency law also serves to clarify its meaning in the amendment.

A reading of dependency cases reveals, however, that the term "parental control" has been employed in those cases primarily in the context of a parent's ability to provide the necessities of life and to refrain from harming the child. (See, e.g., *Marr v. Superior Court* (1952) 114 Cal.App.2d 527, 530 [250 P.2d 739] ["the usual incidents of the exercise of control over" a child are "its proper care and support"]; *In re Corrigan* (1955) 134 Cal.App.2d 751, 755 [286 P.2d 321] [mother's inability to exercise proper control evidenced by failure to protect children from abuse by their father and by leading a "nomadic life of moral poverty and insecurity" that kept them out of school]; *In re Edward C.* (1981) 126 Cal.App.3d 193, 202-203 [178 Cal.Rptr. 694] [father's inability to exercise proper parental control evidenced by "cruel and inhuman corporal punishment" of children].) In that context, a parent's success or failure in fulfilling this duty to control is assessed by the resulting care and support given to the child, as measured by statutory standards such as those in Welfare and Institutions Code section 300. (See fn. 6, *ante*.)Thus, "control" in dependency law is roughly synonymous with "care" and "protection" as used in the amendment. The term has not been employed in dependency law in the sense of regulation of a child's behavior or prevention of a child's delinquent conduct.

(6) As for the scope of this duty, "California follows the Restatement rule (Rest. 2d Torts, § 316), which finds a 'special relationship' between parent and child, and accordingly places upon the parent 'a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent (a) knows or has reason to know that he has the ability to control his child, and (b) knows or should know of the necessity and opportunity for exercising such control.' " (*Robertson v. Wentz* (1986) 187 Cal.App.3d 1281, 1288 [232 Cal.Rptr. 634].)

(7) We "assume that in passing a statute the Legislature acted with full knowledge of the state of the law at the time." (*In re Misener* (1985) 38 Cal.3d 543, 552 [213 Cal.Rptr. 569, 698 P.2d 637].) (3d) When the amendment was enacted, parental tort liability for breach of the duty of supervision and control was a doctrine of long standing. We thus find the terms "supervision" and "control" in the amendment to section 272 to be consistent with the definition and limits of the parental duty established in the law of torts. Welfare and Institutions Code sections 601 and 602 are, of course, concerned with a child's delinquent behavior, not simply a child's harmful behavior. Therefore, we understand the amendment to describe the duty of reasonable restraint of, and discipline for, a child's delinquent acts by parents who know or should know that their child is at risk of delinquency and that they are able to control the child.

It is true that neither the amendment nor prior case law sets forth specific acts that a parent must perform or avoid in order to fulfill the duty of supervision and control. We nonetheless find the duty to be sufficiently certain even though it cannot be defined with precision. [FN8] To plaintiffs' complaint that the amendment is subjective and imprecise, defendants reply *573 that the amendment's lack of specificity concerning the boundaries of the duty is both inevitable and desirable. We agree with defendants that it would be impossible to provide a

comprehensive statutory definition of reasonable supervision and control. Unlike the statute at issue in *Kolender v. Lawson, supra,* 461 U.S. 352, which was invalidated because it failed to provide standards by which to evaluate the "credible and reliable" identification it required, the present amendment is not susceptible of exegesis in an apt sentence or two.

> FN8 It is instructive to note that in dependency cases terms similar to "supervision" and "control" have withstood challenge on vagueness grounds even though "[f]ew [dependency] cases have attempted to define 'proper and effective parental care or control' [citation], since in most cases ... it is easier to describe what is not proper parental care and control." (*In re Edward C., supra,* 126 Cal.App.3d at p. 202; see, e.g., *In re J. T.* (1974) 40 Cal.App.3d 633, 638 [115 Cal.Rptr. 553] [upholding the phrase "proper and effective parental care or control" in former Welfare and Institutions Code section 600, subdivision (a)]; *In re Baby Boy T.* (1970) 9 Cal.App.3d 815, 818-819 [88 Cal.Rptr. 418] [upholding the phrase "incapable of supporting or controlling the child in a proper manner" in Civil Code former section 232, subdivision (g)].) As previously noted, of course, the term "parental control" in dependency law is not synonymous with that in tort law. (See fn. 7, *ante.*)

We also agree that a statutory definition of "perfect parenting" would be inflexible and not necessary to identify the egregious breaches of parental duty that come within the statute's purview. The concept of reasonableness serves as a guide for law-abiding parents who wish to comply with the statute. "As the Supreme Court said in *Go-Bart Importing Co. v. United States* (1931) 282 U.S. 344, 357 [75 L.Ed.2d 374, 382, 515 S.Ct. 153], 'There is no formula for the determination of reasonableness.' Yet standards of this kind are not impermissibly vague, provided their meaning can be objectively ascertained by reference to common experiences of mankind." (*People v. Daniels* (1969) 71 Cal.2d 1119, 1129 [80 Cal.Rptr. 897, 459 P.2d 225, 43 A.L.R.3d 677].) (8) One can devise hypotheticals to demonstrate the difficulty of deciding whether particular parental acts were reasonable, but "statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language." (*United States v. National Dairy Corp.* (1963) 372 U.S. 29, 32 [9 L.Ed.2d 561, 565, 83 S.Ct. 594].)

(3e) Section 272 holds parents liable only if they are criminally negligent in breaching their duty of supervision and control. This requirement of criminal negligence arises in part from Penal Code section 20, which provides, "In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence." It also arises in part from the Legislature's use of the term "reasonable" in the amendment. The duty to act "reasonably" reflects the applicability of the negligence doctrine here, criminal, not civil, negligence.

(9) In the criminal context, "ordinary negligence sufficient for recovery in a civil action will not suffice; to constitute a criminal act the defendant's conduct must go beyond that required for civil liability and must amount to a 'gross' or 'culpable' departure from the required standard of care." (*People v. Peabody* (1975) 46 Cal.App.3d 43, 47 [119 Cal.Rptr. 780].) (3f) It *574 follows that the amendment to section 272 punishes only negligence that exceeds ordinary civil negligence. We have defined criminal negligence as " 'aggravated, culpable, gross, or reckless, that is, ... such a departure from what would be the conduct of an ordinarily prudent or careful [person] under the same circumstances as to [demonstrate] ... an indifference to consequences.' " (*People v. Penny* (1955) 44 Cal.2d 861, 879 [285 P.2d 926].)

The heightened requirements of the criminal negligence standard in regard to breach of duty alleviate any uncertainty as to what constitutes reasonable supervision or control. Plaintiffs fear the statute punishes parents who could not reasonably know that their child is at risk of delinquency. As we have seen, however, only a parent who "knows or should know of the necessity and opportunity for exercising ... control" can be held liable in tort for breaching the duty to control a child. (*Robertson v. Wentz, supra,* 187 Cal.App.3d at p. 1288.) Similarly, there can be no criminal negligence without actual or constructive knowledge of the risk. (See *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].) In the setting of involuntary manslaughter, for example, "[c]riminal liability cannot be predicated on every careless act merely because its carelessness results in injury to another. [Citation.] The act must be one which has knowable and apparent potentialities for resulting in death. Mere inattention or mistake in judgment resulting even in death of another is not criminal unless the

quality of the act makes it so." (*Ibid.*) Under the criminal negligence standard, knowledge of the risk is determined by an objective test: "[I]f a *reasonable person* in defendant's position would have been aware of the risk involved, then defendant is presumed to have had such an awareness." (*People v. Watson* (1981) 30 Cal.3d 290, 296 [179 Cal.Rptr. 43, 637 P.2d 279].) The amendment thus punishes only parents who know or reasonably should know that their child is at risk of delinquency.

Plaintiffs also fear the statute punishes parents who try but fail to control their children. In tort law, however, "[t]he duty of a parent is only to exercise such ability to control his child as he in fact has at the time when he has the opportunity to exercise it and knows the necessity of so doing. The parent is not under a duty so to discipline his child as to make it amenable to parental control when its exercise becomes necessary to the safety of others." (Rest.2d Torts, § 316, com. b.) In other words, a parent who makes reasonable efforts to control a child but is not actually able to do so does not breach the duty of control. This is consistent with the rule that " 'there is no [civil] liability upon the parent unless he has had an opportunity to correct specific propensity on the part of the child, and that it is too much to hold the parent responsible for general incorrigibility and a bad disposition.' " (*Singer v. Marx, supra,* 144 Cal.App.2d at p. 644.) A fortiori, parents who reasonably try but are unable to control their children are not criminally negligent. *575

The criminal negligence standard in regard to breach of duty thus provides notice to law-abiding parents that is consistent with and reinforces the notice provided by the amendment's incorporation of the definition and limits of the tort duty of parental supervision and control. The amendment requires parents who know or reasonably should know of the child's risk of delinquency to exercise their duty of supervision and control. This duty consists of undertaking reasonable-not necessarily successful-efforts at supervision and control. Omission of this duty owing to simple negligence will not subject the parent to criminal liability; a parent can be convicted only for gross or extreme departures from the objectively reasonable standard of care.

In sum, we understand the Legislature to have intended the amendment to provide that there is a duty of reasonable restraint of, and discipline for, a child's delinquent acts by parents who know or should know that their child is at risk of delinquency and that they are able to control the child. Parents who intentionally or with criminal negligence fail to perform this duty, and as a result contribute to the delinquency of the child, violate section 272.

Thus understood, the amendment is specific enough to allow parents to identify and avoid breaches of the duty of supervision and control for which they could be penalized under section 272. The amendment does not trap the innocent. It provides adequate notice to parents with regard to potential criminal liability for failure to supervise and control their children because (1) it incorporates the definition and the limits of a parental duty to supervise and control children that has long been a part of California tort law, and (2) it imposes criminal liability only when the parent engages in conduct that so grossly departs from the standard of care as to amount to criminal negligence.

B. *Enforcement*

In addition to affording notice to citizens, due process requires that the amendment to section 272 provide standards for its application and adjudication in order to avoid the dangers of arbitrary and discriminatory enforcement. (*Grayned v. City of Rockford, supra,* 408 U.S. at pp. 108-109 [33 L.Ed.2d at pp. 227-228].) (1b) Indeed, the requirement of guidelines for law enforcement is "the more important aspect of the vagueness doctrine." (*Kolender v. Lawson, supra,* 461 U.S. at p. 358 [75 L.Ed.2d at p. 909].) The reason for its importance is that "[w]here the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.' " (*Ibid.*)

At issue in *Kolender v. Lawson, supra,* 461 U.S. 352, was a statute construed to require people accused of loitering to provide "credible and *576 reliable" identification. Holding the statute unconstitutionally vague, the high court noted that its lack of any standard for determining how a suspect should meet the requirement "vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute ...." (*Id.* at p. 358 [75 L.Ed.2d at p. 909].)

(3g) Unlike the statute in *Kolender,* the amendment to section 272 as construed herein does not vest "virtually complete discretion" in law enforcement officials. Although the amendment contains no explicit description of the parental duty, it incorporates a preexisting definition from tort law that supplies sufficient guidance to police,

prosecutors, and juries charged with enforcing it, and thereby minimizes the danger of arbitrary or discriminatory enforcement.

Application of the criminal negligence standard facilitates enforcement and adjudication of the amendment. Although the standard does not with specificity proscribe parental conduct or omission, it aids those who would enforce parental duty in providing a measure by which to assess a parent's knowledge of or authority over a child's delinquent activities.

The causation element of section 272 also reduces the likelihood of arbitrary or discriminatory enforcement. A parent will be criminally liable only when his or her criminal negligence with regard to the duty of reasonable supervision and control "causes or tends to cause or encourage" the child to come within the provisions of Welfare and Institutions Code sections 601 or 602. The Court of Appeal expressed concern about the difficulty of determining whether there is in fact a causal link between parental behavior and juvenile delinquency. It is true that the causation element of section 272 could be more difficult to apply when the question is whether a parent's failure to supervise or control a child caused the child to become delinquent than when the parent's potentially culpable conduct is of a more direct nature-for example, when the parent is an accomplice of the minor in the commission of a crime. Although there may be circumstances in which reasonable minds could differ as to whether a parent's inadequate supervision or control caused or tended to cause the child's delinquency, the same causation question has been an element of the tort liability of a parent for failure to exercise reasonable supervision and control. In that context, causation has not proved unduly troublesome. Furthermore, the opportunity for parental diversion from criminal prosecution under section 272 in less egregious cases suggests that as a practical matter a parent will face criminal penalties under section 272 for failure to supervise only in those cases in which the parent's culpability is great and the causal connection correspondingly clear. *577

We therefore conclude that the amendment to section 272 as construed herein does not "impermissibly delegate[] basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." (*Grayned v. City of Rockford, supra*, 408 U.S. at pp. 108-109 [33 L.Ed.2d at p. 228].) Although the amendment calls for sensitive judgment in both enforcement and adjudication, we would not be justified in assuming that police, prosecutors, and juries are unable to exercise such judgment.

III. Overbreadth

(10a) Like a vagueness challenge, an overbreadth challenge implicates the constitutional interest in due process of law. (U.S. Const., Amends. V, XIV; Cal. Const., art. I, § § 7, subd. (a), 24.) The overbreadth doctrine provides that "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." (*NAACP v. Alabama* (1964) 377 U.S. 288, 307 [12 L.Ed.2d 325, 338, 84 S.Ct. 1302].)

(11a) Plaintiffs contend that the amendment is overbroad on its face because it infringes on the right of intimate family association protected by both the federal and state Constitutions. This contention is without merit.

(12) Plaintiffs emphasize the fundamental nature of the rights at stake in matters of child rearing. We need no convincing of their significance; we have already recognized that "[t]he concept of personal liberties and fundamental human rights entitled to protection against overbroad intrusion or regulation by government ... extends to ... [citations] such basic liberties and rights not explicitly listed in the Constitution [as] the right 'to marry, establish a home and bring up children' [citation]; the right to educate one's children as one chooses [citation]; ... and the right to privacy and to be let alone by the government in 'the private realm of family life.' [Citations.]" (*City of Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259, 266-267 [85 Cal.Rptr. 1 [466 P.2d 225, 37 A.L.R.3d 1313].)

(10b) Nevertheless, a facial overbreadth challenge is difficult to sustain. The high court has emphasized that "[a]pplication of the overbreadth doctrine ... is, manifestly, strong medicine. It has been employed ... sparingly and only as a last resort." (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 613 [101 L.Ed.2d 1, 17, 108 S.Ct. 2225].) Consequently, to justify a conclusion of facial overbreadth, "the overbreadth of a statute must not only be real, but substantial as well ...." (*Id.* at p. 615 [37 L.Ed.2d at p. 842].)*578 Applying this test, the high court declined to strike down a statute altering the definition of "private"

lubs for antidiscrimination purposes because the plaintiff failed to "demonstrate from the text of [the statute] and from actual fact that a substantial number of instances exist in which the [statute] cannot be applied constitutionally .... No record was made in this respect, we are not informed of the characteristics of any particular clubs, and hence we cannot conclude that the [statute] threatens to undermine the associational or expressive purposes of any club, let alone a substantial number of them." (*New York State Club Assn. v. New York City* (1988) 487 U.S. 1, 14 [101 L.Ed.2d 1, 17, 108 S.Ct. 2225].)

(11b) Here plaintiffs likewise fail to show that the amendment is substantially overbroad. Their argument consists of brief and general assertions of the amendment's "limitless reach" into "virtually every aspect of child rearing and intimate family association," authorizing "law enforcement personnel to second guess *every* parental decision ...." (Italics added.) These assertions lack the kind of particularity required by the high court in *New York State Club Assn. v. New York City, supra,* 487 U.S. at page 14 [101 L.Ed.2d at pages 16-17], and, by themselves, do not compel the conclusion that the statute is overbroad. Although the right of intimate family association is constitutionally protected, a statute that seeks to regulate parental behavior is not overbroad per se.

Moreover, plaintiffs premise their assertions on the contention that the amendment makes a "standardless intrusion ... into the intimate area of parent-child relationships." As discussed in our vagueness analysis (pt. II, *ante*), however, the amendment is not standardless: it incorporates the definition and limits of the parental tort duty of supervision and control. That definition and those limits guard against any excessive sweep by the criminal prohibition. Because plaintiffs do not show that "a substantial number of instances exist in which the [amendment as construed] cannot be applied constitutionally" (*New York State Club Assn. v. New York City, supra,* 487 U.S. at p. 14 [101 L.Ed.2d at p. 17]), we "cannot conclude that the [amendment] is substantially overbroad and must assume that 'whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied.' [Citation.]" (*Ibid.*)

We therefore conclude that the amendment to section 272 does not, on its face, "sweep unnecessarily broadly and thereby invade the area of protected freedoms.' " (*NAACP v. Alabama, supra,* 377 U.S. at p. 307 [12 L.Ed.2d at p. 338].)*579

The judgment of the Court of Appeal is reversed with directions to affirm the judgment of the trial court.

Lucas, C. J., Panelli, J., Kennard, J., Arabian, J., Baxter, J., and George, J., concurred. *580

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SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	SB 1313

UNFINISHED BUSINESS

Bill No: SB 1313
Author: Kuehl (D), et al
Amended: 8/25/04
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 6-0, 4/20/04
AYES: McPherson, Vasconcellos, Burton, Margett, Romero, Sher

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 29-0, 8/27/04
AYES: Ackerman, Alarcon, Ashburn, Battin, Bowen, Brulte, Burton, Chesbro, Denham, Ducheny, Figueroa, Hollingsworth, Karnette, Kuehl, Machado, Margett, McPherson, Murray, Oller, Ortiz, Perata, Poochigian, Romero, Scott, Sher, Soto, Speier, Torlakson, Vasconcellos
NO VOTE RECORDED: Aanestad, Alpert, Cedillo, Dunn, Escutia, Florez, Johnson, McClintock, Morrow, Vincent, Vacancy

ASSEMBLY FLOOR : 75-2, 8/27/04 - See last page for vote

SUBJECT : Child abuse reporting

SOURCE : Office of the Attorney General

DIGEST : This bill enacts numerous reforms recommended in a March 2004 report by the Child Abuse and Neglect

CONTINUED

PageB
Reporting Act Task Force.

Assembly Amendments (1) were technical and clarifying, and (2) added co-authors.

ANALYSIS : Current law establishes the Child Abuse and Neglect Reporting Act (CANRA), which generally is intended to protect children from abuse and neglect. (Penal Code 11164.)

Current law establishes the CANRA Task Force. (Penal Code 11174.4.)

This bill makes numerous changes to CANRA to implement the recommendations of the CANRA Task Force. Specifically, this bill:

1. Clarifies that, while volunteers generally are not mandated reporters, Court-Appointed Special Advocate volunteers are mandated reporters.

2. Clarifies that irrespective of whether an employer provides training, the employer shall be required to provide mandated reporter employees with the statement that the employee must sign acknowledging that he or she is a mandated reporter.

3. Revises the evidentiary requirement for a "substantiated report" of child abuse or neglect by deleting the "some credible evidence" standard and replacing that phrase with the standard of "evidence that makes it more likely than not that child abuse or neglect . . . occurred."

4. Clarifies a potential inconsistency in statutes whether a mandated reporter must report the infliction of mental suffering or endangered emotional well-being, maintaining one provision requiring notification of willful infliction of mental suffering, and authorizing reporting when circumstances fall short of that standard.

5. Expands the statement an employer is required to provide a mandated reporter employee to include information about his or her confidentiality rights, in addition to the existing notice that he or she is a mandated

PageC
reporter and explaining reporting obligations.

6. Relocates the local interagency child death review teams from CANRA and renumbers the affected sections into a new Article 2.6, under the heading "Child Death Review Teams."

7. Clarifies that the limitation on disclosure is applicable to both the mandated reports and the reports prepared by investigative agencies after conducting an investigation.

8. Combines two provisions authorizing a person who has been identified by the State Department of Justice (DOJ) as or has verified with DOJ that he or she is listed in the Child Abuse Central Index (CACI) to receive reports and clarifies this right vis-a-vis the Public Records Act.

9. Explicitly provides that DOJ shall make relevant CACI information available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation consistent with practices authorized in regulation.

10. Requires DOJ to make available information regarding a known or suspected child abuser maintained in CACI to a government agency conducting a background check on a person seeking employment as a peace officer.

11. Prohibits a person or agency from requiring or requesting that a person provide a copy of a record that he or she is or is not listed in CACI.

12. Provides that licensed adoption agencies, like other agencies with access to CACI information, are responsible for obtaining the original investigative report and drawing independent conclusions based on the investigative report before acting on the information.

13. Specifies that the existing mandated reporter immunity shall also include those reports in which the reporter gained the knowledge or reasonable suspicion of child abuse outside his or her professional capacity or scope

□

of employment.

14. Includes double-jointing provisions to avoid potential chaptering conflicts with AB 20 (Lieber), AB 2531 (Bates), and AB 2749 (Dutton).

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes

Local: No

According to the Assembly Appropriations Committee analysis, "minor absorbable administrative costs to the Department of Justice."

SUPPORT : (Verified 8/27/04)

State Attorney General (source)
Child Abuse Prevention Council of Contra Costa County

ARGUMENTS IN SUPPORT : According to the author's office, "For 40 years, California has been committed to identifying children who have been injured other than by accidental incidents or disease and who are at continuing risk of being deliberately or recklessly re-injured by persons who have custody or supervisory control over them. CANRA has served as the statutory vehicle for protecting these children. AB 2442 (Keeley), Chapter 1064, Statutes of 2002, created the CANRA Task Force for the purpose of reviewing CANRA, its value in protecting children and recommending needed changes in the law. This bill implements the Task Force's recommendations."

ASSEMBLY FLOOR :
AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, Yee, Nunez

□

PageE
NOES: La Suer, Runner
NO VOTE RECORDED: Campbell, Haynes, Mountjoy

RJG:cm 8/31/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No. SB 646 Author: Watson (D) Amended: 9/1/87 Vote Required: Majority

Committee Votes

COMMITTEE: JUDICIARY
BILL NO. SB 646
DATE OF HEARING: 3-12-87

SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Richardson	✓	
Roberti	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
VOTE:	11-0	

Senate Floor Vote: 9-11-87 AB 3703

Senate Bill 646—An act to amend Section 11165 of, to amend the heading of Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of, to add Section 11166 to, and to repeal Section 11174.5 of, the Penal Code, relating to child abuse.

Roll Call

The roll was called and the Senate concurred in Assembly amendments by the following vote:

AYES (37)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Craven, Dercinko, Dills, Doolittle, Ellis, Garamendi, Cecil Green, Bill Greene, Leroy Greene, Hart, Keene, Kopp, Lockyer, Maddy, Marks, McCorquodale, Mello, Morgan, Nielsen, Petris, Presley, Robbins, Roberti, Rogers, Rosenthal, Royce, Russell, Seymour, Torres, Vuich, and Watson.

NOES (0)—None.

Above bill ordered enrolled.

Assembly Floor Vote: 74-1, P. 4224 (9/2/87)

SUBJECT: Child abuse

SOURCE: Author

DIGEST: This bill defines specified conduct of school personnel which is not considered to be child abuse. This bill also provides that school district police and security departments be specifically excluded from the definition of "child protective agency."

Assembly Amendments double join with SB 691.

ANALYSIS: Existing law requires certain categories of persons to report known or suspected instances of child abuse to child protective agencies, as specified. "Child protective agency" is defined to mean a police or sheriff's department, a county probation department, or a county welfare department.

This bill would specify that the term "child protective agency" does not include a school district police or security department. The bill would also specify that certain conduct, authorized of persons employed by or engaged in a public school, as specified, is not child abuse. Finally, it would make a technical change with regard to an existing statement of legislative intent, designate the provisions relating to child abuse reporting as the Child Abuse and Neglect Reporting Act, and make related change.

The purpose of this bill is to narrow the definition of child abuse for the purposes of reporting to allow school personnel to break up fights on the premises and to defend themselves.

CONTINUED

According to Senator Watson's Task Force on Child Abuse and its Impact on Public Schools, there has been a great deal of concern expressed over reports of alleged child abuse being made to school district police or security departments rather than to local law enforcement agencies. Existing law is unclear about whether such reports meet the statutory criteria.

These school related agencies do not always have the full training that other peace officers receive, and often they do not have the personnel necessary to deal with reports of child abuse. Moreover, procedures and recordkeeping vary from school to school; thus, the possibility exists that reports might be lost or rendered unusable in any subsequent criminal action.

According to the Senate Judiciary Committee analysis, this bill has been recommended to clarify that school district police or security departments would not be considered child protective agencies for the purposes of child abuse reporting.

The Task Force listened to a number of individuals employed by school districts who complained that the reporting requirements under existing law were too vague. As a result, reports of abuse were made against school personnel who engaged in certain conduct which might be considered abusive in certain situations but which was employed in order to stop a fight, used for self defense, or applied to take possession of weapons or dangerous objects from a pupil. School personnel suggested that the vagueness of the existing reporting requirements coupled with the fact that their positions demanded a substantial amount of contact with unruly and disruptive children subjected them to repeated reports of child abuse, each of which needed to be investigated.

The bill would create an exception to the reporting requirement by providing that corporal punishment or injury would not include an amount of force that was reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects, as specified, within the control of the pupil.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 9/3/87)

Task Force on Child Abuse
California Association for Counseling and Development
State Bar Committee on Juvenile Justice

CONTINUED

C
72 Ops. Cal. Atty. Gen. 216, 1989 WL 408277 (Cal.A.G.)

Office of the Attorney General
State of California
*1 Opinion No. 89-601

October 24, 1989

THE HONORABLE ARLO SMITH
DISTRICT ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

THE HONORABLE ARLO SMITH, DISTRICT ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO, has requested an opinion on the following question:

Is a ballet teacher employed by a private ballet school required to report instances of child abuse under the Child Abuse and Neglect Reporting Act?

CONCLUSION

A person who teaches ballet at a private ballet school is required to report instances of child abuse under the Child Abuse and Neglect Reporting Act.

ANALYSIS

The Child Abuse and Neglect Reporting Act (Pen.Code, 11165 et seq.) creates a system whereby " child protective agencies" (i.e., police and sheriff's departments and county welfare and probation departments) can be promptly notified of suspected instances of child abuse so that they can take timely action if necessary to protect the children. [FN1] (65 Ops.Cal.Atty.Gen. 345, 347 (1982); cf., Planned Parenthood Affiliates v. Van de Kamp (1986) 181 Cal.App.3d 245, 258, 267, 272, 279; see also, Krikorian v. Barry (1987) 196 Cal.App.3d 1211, 1216-1217.) The Act does this by requiring certain categories of persons whose occupations place them in contact with children to report to a " child protective agency" when, in the course of their work, they come to know or reasonably suspect that someone under the age of eighteen has been a victim of child abuse. (§ 11166, subd. (a).) These persons are provided with an absolute immunity from any civil or criminal liability in connection with any report they are required or authorized to make under the Act (§ 11172, subd. (a); cf., Krikorian v. Barry, supra, 196 Cal.App.3d 1211, 1215), but their failure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a $1,000 fine. (§ 11172, subd. (e).)

Among the persons who are required to report instances of child abuse are " child care custodians" (§ 11166, subd. (a)), a broad category that includes teachers, day care workers, and a variety of public health and educational professionals. (§ 11165.7; cf., § 11166.5, subd. (a); Planned Parenthood Affiliates v. Van de Kamp, supra). We are asked whether a ballet teacher who teaches ballet at a particular private ballet school is included among them. We conclude that such a person is included in the category of persons who must report instances of child abuse under

the Child Abuse and Neglect Reporting Act.

Since the nature of the position and the school has prompted the request for this opinion, we describe it here as it has been described to us in information accompanying the opinion request: The San Francisco Ballet School is an arm of the San Francisco Ballet Association, a private non-profit organization which operates independently from the City and County of San Francisco. The School derives operating revenue from student tuition for its classes and from funds provided by the Ballet Association. The Ballet Association does not receive general fund revenue from the City and County of San Francisco, but it does receive a grant award as a non-profit private entity from the latter's Publicity and Advertising fund which is established through the collection of hotel tax revenue.

2 The Ballet School holds an " Authorization to Operate As a Private Postsecondary Educational Institution" issued by the State of California Department of Education because it has been accredited for its nondegree objective by a national accreditation agency (the National Association of Schools of Dance) recognized by the U.S. Department of Education. (Ed.Code, § 94311, subd. (c) [FN2]; see generally, 68 Ops.Cal.Atty.Gen. 278 (1985); 67 Ops.Cal.Atty.Gen. 250 (1984).) The School may participate in the Student Tuition Recovery Fund" , and since it meets the Department of Health, Education and Welfare's definition of an institution of higher education, it is eligible to apply for participation in various student financial assistance programs administered by the Federal Office of Education.

The teaching staff of the Ballet School is composed primarily of former professional ballet dancers. These teachers are not trained as academic personnel in the traditional sense, but rather are performing artists who have studied at some of the most prestigious ballet institutions around the world. They do not hold academic degrees in education and they do not necessarily possess teaching certificates or credentials from the State. (Cf., Ed.Code, §§ 44001-44005, 44250.)

The School accepts students beginning at eight years of age, and provides instruction and performance opportunities (including performances with the Ballet Company) that prepare them for careers as professional ballet performers. [The School also provides adult classes for persons who are not artists or performers.] The School does not provide " academic" instruction (except as it may bear on dance history and performance technique), and attendance at it is not mandatory as it is in public or private educational schools. (Ed.Code, §§ 48200, 48220, 48222.) [FN3]

In addition to regular classes held at the School, the Ballet School conducts a local outreach program in the public schools in San Francisco. This consists of introductory dance sessions or classes in those schools at which the regular public school teachers are always present. The Ballet School teachers who attend this activity are considered to be guest artists or performers. Student attendance at the sessions and classes is required as part of the regular public school arts educational program. A public school student may go on to take dance lessons at the Ballet School itself, but that would not be a mandatory part of his or her regular public education.

It is patent from the foregoing that in the course of his or her profession, a ballet teacher at the San Francisco Ballet School is in daily contact with persons under the age of eighteen. It would also seem fair to say that because of the

nature of ballet classes, the ballet teacher would be in a special position to observe instances of child abuse. To return to our question then, when he or she comes to know or reasonably suspect that a student at the School has been a victim of child abuse, must he or she report it under the Child Abuse and Neglect Reporting Act?

*3 Our task in answering the question is to ascertain the intent of the Legislature: Did the Legislature intend for such private school ballet teachers to be included in the class of persons for whom reporting child abuse is compulsory under the Child Abuse and Neglect Reporting Act? (Cf., Planned Parenthood Affiliates v. Van de Kamp, supra, 181 Cal.App.3d 245, 267; Select Base Materials v. Board of Equalization (1959) 51 Cal.2d 640, 645.) To ascertain that intention we turn first to the words of the statute itself. (People v. Stockton Pregnancy Control Medical Clinic, Inc. (1988) 203 Cal.App.3d 225, 235; Moyer v. Workmen's Compensation Appeals Board (1973) 10 Cal.3d 222, 230; Rich v. State Board of Optometry (1965) 235 Cal.App.2d 591, 604.)

Section 11166, subdivision (a) of the Child Abuse and Neglect Reporting Act provides in pertinent part as follows:

" [A]ny child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.... For the purposes of this article, ' reasonable suspicion' means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse...." (Emphasis added.)

For purposes of the Act, the term " child care custodian" is defined in section 11165.7, subdivision (a), to mean:

" a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a licensed community care or child day care facility; [a] headstart teacher; a licensing worker or licensing evaluator; [a] public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school." (§ 11165.7, subd. (a), as amended by Stats. 1987, ch. 1459, § 14; emphases added.)

*4 Looking at the words and phrases, and the punctuation (cf., Wholesale T. Dealers National Etc. Co. (1938) 11 Cal.2d 634, 659; Paris v. County of Santa Clara (1969) 270 Cal.App.2d 691, 699) of subdivision (a) of section 11165.7, we see that the Legislature has now used semicolons to designate distinct subcategories of

persons within the overall category of " child care custodians" who must report instances of child abuse. With respect to those who are involved with students in school they include

- teachers;
- instructional aides, teacher's aides, or teacher's assistants employed by any public or private school, who have been trained in the duties imposed by the Child Abuse and Neglect Reporting Act, if their school district has so warranted to the State Department of Education; [FN4]
- classified employees of any public school who have been trained in the duties imposed by the Act, if the school has so warranted to the State Department of Education;
- administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school;
- headstart teachers; and
- persons who are administrators or presenters of, or counselors in, a child abuse prevention program in any public or private school.

A ballet teacher at the San Francisco Ballet School would not fall in any of the last four of these subcategories. Neither would he or she fall into the second category-that of aides and assistants, because he or she would have primary responsibility for instruction in his or her ballet class and so would not be an aide or assistant to someone else. And even when he or she appears at a public school, he or she does so as a guest performer and not as a teacher's aide or assistant regularly employed at that school. Thus if the ballet teacher is to fall in any of the subcategories of " child care custodians" who must report child abuse under the Act, it would have to be in the first, as a " teacher" . The question thus becomes whether he or she is a " teacher" within the meaning of the Child Abuse and Neglect Reporting Act.

The term " teacher" is not defined in the Child Abuse and Neglect Reporting Act or elsewhere in the Penal Code. Absent that, the word as used in the Act should be interpreted according to its usual, ordinary and generally accepted meaning. (Cf., People v. Craft (1986) 41 Cal.3d 554, 560; People v. Castro (1985) 38 Cal.3d 301, 310; People v. Belleci (1979) 24 Cal.3d 879, 884; Palos Verdes Faculty Assn v. Palos Verdes Peninsula Unified Sch. Dist. (1978) 21 Cal.3d 650, 658; Great Lakes Properties Inc. v. City of El Segundo (1977) 19 Cal.3d 152, 155-156.) There, reference to the dictionary is helpful to understand the common generally accepted meaning of the term. (Cf., People v. Spencer (1975) 52 Cal.App.3d 563, 565; People v. Medina (1972) 27 Cal.App.3d 473, 479; People v. Johnson (1957) 147 Cal.App.2d 417, 419.) Indeed, in a recent Opinion, 70 Ops.Cal.Atty.Gen. 139 (1987), we looked to the dictionary to discern the meaning of the phrase " teaching staff" . (Id. at 144.)

*5 Doing so here, we see that the term " teacher" is defined, inter alia, as " one whose occupation is to instruct" , as for example " a driving teacher." (Webster's Third New Intn'l. Dict. (1971 ed.) at p. 2346.) And the term " teach" , we are told, " is a general term for causing one to acquire knowledge or skill, usu[ally] with the imparting of necessary incidental information and the giving of incidental help and encouragement" , as in teaching " boys how to swim." (Ibid.)

There is nothing in the definition of " teacher" or " teach" to suggest that either is in any way limited to particular subjects, knowledge, or skills. It seems clear that one whose occupation is to instruct others in the skill of dance

is a " teacher" in the ordinary use of the word, and we thus consider the ballet teacher here to be a teacher within the common meaning of the term.

We are to construe the Child Abuse and Neglect Reporting Act " according to the fair import of [its] terms, with a view to effect its objects and to promote justice." (Pen.Code, § 4.) In looking at " the ordinary import of the language used in framing [it]" (Moyer v. Workmen's Comp. Appeals Bd., supra, 10 Cal.3d 222, 230; In re Alpine (1928) 203 Cal. 731, 737) " [a] narrow or restricted meaning should not be given to a word, if it would result in an evasion of the evident purpose of the act, when a permissible, but broader, meaning would prevent the evasion and carry out that purpose." (In re Reineger (1920) 184 Cal. 97, 103.)

The purpose of the Reporting Act is to detect and prevent child abuse, an objective in which the State of California has a significant state interest. (People v. Stritzinger (1983) 34 Cal.3d 505, 511-512; People v. Stockton Pregnancy Control Medical Clinic, Inc., supra, 203 Cal.App.3d 225, 241; Planned Parenthood Affiliates v. Van de Kamp, supra, 181 Cal.App.3d 245, 258, 279; 65 Ops.Cal.Atty.Gen. 345, 347, supra.) As noted at the outset, the primary means in which the Act's purpose of protecting victims from child abuse is attained, is to have child abuse agencies promptly notified of its occurrence. (Cf., People v. Stritzinger, supra, at 511-512; People v. Stockton Pregnancy Control Medical Clinic, Inc., supra, at 241; Krikorian v. Barry, supra, 196 Cal.App.3d 1211, 1216-1217; Planned Parenthood Affiliates v. Van de Kamp, supra, at 258-259, 267, 272, 279; 65 Ops.Cal.Atty.Gen. 345, 347, supra.) To ensure that that occurs, the Legislature has decided that when persons engage in certain callings which bring them into contact with persons under eighteen years of age, they must assume a responsibility to report instances of child abuse that they come to know about or suspect through that contact. (§ 11166,, subd. (a); cf., Planned Parenthood Affiliates v. Van de Kamp, supra, 181 Cal.App.3d 245, 272.)

Originally, reporting was required only of physicians (former § 11161.5 added by Stats. 1963, ch. 576, § 1, p. 1454), reflecting a belief that they " were in a unique position to discover child abuse and particularly the battered child syndrome." (Comment, Reporting Child Abuse: When Moral Obligations Fail (1983) Pacific L.J. 189, 213; fn. omitted.). But over the years the Legislature has expanded the categories of persons who have a duty to report. [FN5] (Cf., Kimberly M. v. Los Angeles Unified School Dist. (1987) 209 Cal.App.3d 1326, 1333; see also, Comment, supra, 15 Pacific L.J. at 213-214 & 213 fn. 223.) School superintendents and principals became mandatory reporters in 1966 (Stats. 1966, First Ex. Sess., ch. 31, § 2, p. 325), and the law was amended in 1971 to include school teachers. (Stats. 1971, ch. 1729, § 7, p. 3680). " Thus school teachers and administrative officers [became] designated ' child care custodians' charged with mandatory reporting duties, the violation of which is a misdemeanor." (Kimberly M. v. Los Angeles Unified School Dist., supra, 209 Cal.App.3d at 1333.)

*6 If we look at the 1971 amendments to the statute which originally imposed the duty on teachers to report child abuse under the precursor of the Child Abuse and Neglect Reporting Act, former section 11161.5 of the Penal Code, we see that it imposed that duty on " any teacher or [sic, of] any public or private school." (Stats. 1971, ch. 1729, § 7, p. 3680.) [FN6] The Legislature thus clearly included persons who taught in private schools among those who would have a duty to report. But in so doing the Legislature did not impose any restriction or limitation on the types of private school teachers who would have that duty, based either on what they taught, or on the types of private schools at which they might

teach. (Cf., Emmolo v. Southern Pacific Co. (1949) 91 Cal.App.2d 87, 92; 64 Ops.Cal.Atty.Gen. 192, 202 (1981); 62 Ops.Cal.Atty.Gen. 394, 395-396 (1979); 20 Ops.Cal.Atty.Gen. 31, 33 (1952): [effect of the use of the indefinite adjective " any"].) The plain wording of the statute which imposed the reporting duty on " any teacher of any public or private school" thus included among those upon whom it imposed the reporting duty, persons who might teach ballet at a private non-academic ballet school.

In 1980, the child abuse reporting laws were substantially recast and collected into article 2.5. (Stats. 1980, ch. 1071, §§ 1-4, p. 3420; 4 Stats. 1980 [Sum.Dig. SB 781] at p. 333; cf., Krikorian v. Barry, supra, 196 Cal.App.3d 1211, 1216-1217.) The language of former section 11161.5, which imposed the duty to report child abuse on " any teacher ... of any public or private school" , was carried through to the definition of " child care custodian" , which was now set forth as section 11165, subdivision (h). (Stats. 1980, ch. 1071, § 4, p. 3421.) [FN7] " Child care custodian was defined to mean-

> " a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer." (Former 11165, subd. (h), as added by Stats. 1980, ch. 1071, § 4, supra; emphasis added.)

Section 11165 was repealed in 1987 (Stats. 1987, ch. 1459, § 1) when the definition of " child care custodian" was transferred to newly adopted section 11165.7, where it appears today. (Stats. 1987, ch. 1459, 14, supra.)

However, as it appears today, the definition of " child care custodian" no longer speaks of " a teacher ... of any public or private school" as it did until 1987. It speaks merely of " a teacher" without any qualification. Thus any reason to exclude persons who might teach in particular types of private schools is even less compelling than before. We thus are reinforced in our conclusion that the definition of child care custodian found in section 11165.7 includes persons who teach ballet at a private ballet school.

*7 It has been suggested that our reading of the meaning of " teacher" is too broad. It is pointed out that if the term were indeed so encompassing, there would have been no need to include " headstart teachers" among the occupations listed as " child care custodians" in 1980 (Stats. 1980, ch. 1071, § 4, p. 3421) because the subcategory of " teacher[s] ... of any public or private school" would have already sufficed to include them. That would have made the addition of the subcategory of " headstart teachers" unnecessary, and statutes are supposed to be interpreted to avoid surplusage. (Cf., City and County of San Francisco v. Farrell (1982) 32 Cal.3d 47, 55; California Mfgrs. Assn. v. Public Utilities Com. (1979) 24 Cal.3d 836, 844; Fields v. Eu (1976) 18 Cal.3d 322, 328.)

The suggestion is that the term " teacher" should only apply to persons who teach in those K-12 public and private schools which a pupil must attend under the Compulsory Education Law. (Cf., fn. 3, ante.) After all, those schools and teachers already have broad authority over children and a concomitant duty and responsibility for their care and supervision. (Cf., Kimberly M. v. Los Angeles Unified School Dist., supra, 209 Cal.App.3d 1326, 1331-1332, 1337-1338). And

public school teachers, at least, are specifically given training in the detection of child abuse (Cf., § 11165.7, subds. (b), (c); Ed.Code, 44691.) As the argument goes, ballet teachers at private ballet schools would not be the type of trained " professionals" upon whose judgment and experience the Legislature relied " to distinguish between abusive and nonabusive situations" when it adopted the Child Abuse and Neglect Reporting Act. (Cf., Planned Parenthood Affiliates v. Van de Kamp, supra, 181 Cal.App.3d 245, 258-259, 272.) [FN8]

We reject the position and the associated suggestion that the term " teacher" as used in the Act only applies to persons who teach in public and private K-12 schools. First, we do not view the addition of " headstart teachers" as in any way derogating from the basic meaning of " teachers." That category is used without any qualification, which means any kind of teacher. We believe " headstart teachers" were specifically mentioned as " child care custodians" to make sure that those pre-school teachers were included among those who would have a reporting duty under the Act. Their addition could not have been meant to limit the existing subcategory of " teachers" as " child care custodians" for to turn the argument about: what types of teachers would have then been excluded, because " headstart teachers" were now included in the definition of " child care custodian" ?

Without intending to suggest that the meaning of the word " teacher" as found in the Act is without bounds and mandates a reporting duty on any person who happens to impart some knowledge or skill to a child, we do not accept the proffered ..tation that it applies only to teachers in K-12 schools. We find nothing in ... statutory language of the Child Abuse and Neglect Reporting Act to support such a limitation on the plain meaning of the word " teacher" . Second, it bears noting that the particular private Ballet School that has been described does not operate free from all governmental oversight. It is " licensed" by a state agency to operate as a Private Postsecondary Educational Institution in California (cf., Ed.Code, § 93411, subd. (c), supra, fn. 2), and its credentials permit it to participate in the Student Tuition Recovery Fund and to apply for other student financial assistance programs. In its operation, it deals with students as young as eight years of age, whom it owes as much a duty of care and supervision as does a public or private K-12 school. (Cf., Hoyem v. Manhattan Beach City Sch. Dist. (1978) 22 Cal.3d 508, 518-520; Kimberly M. v. Los Angeles Unified School Dist., supra, 209 Cal.App.3d 1326, 1337 fn. 10; see generally, Comment, supra, 15 Pacific L.J. 189, 202207.)

*8 But most important, we cannot accept the notion that a ballet teacher at the School would not be a type of trained " professional" upon whose judgment and experience the Legislature relied to report known or suspected instances of child abuse. Such a person is professionally in contact with children on a regular and continuous basis (cf., Ed. Code, § 44690), and deals with them in a setting where evidence of child abuse may be uniquely readily apparent. We do not believe that " drawing when appropriate on his or her training and experience" (§ 11166.5, subd. (a)) he or she would be unqualified to make informed judgments regarding child abuse from empirical observation. (Cf., Planned Parenthood Affiliates v. Van de Kamp, supra, 181 Cal.App.3d at 259; Comment, supra, 15 Pacific L.J. at p. 214.) In this vein we note that the Act has imposed the obligation to report known or ...spected instances of child abuse on other persons in the private sector, such as ...inistrators of private day camps, employees of child day care facilities, and ...ster parents. (§ 11165.7.) We do not think it incongruous for the Legislature to

ave intended that ballet teachers at private ballet schools have that duty as ell.

ne Child Abuse and Neglect Reporting Act imposes a duty on " teachers" to report nstances of child abuse that they come to know about or suspect in the course of neir professional contact in order that child protective agencies might take ppropriate action to protect the children. We are constrained to interpret the anguage of the Act according to the ordinary meaning of its terms to effect that urpose. Doing so, we conclude that a person who teaches ballet at a private allet school is a " teacher" and thus a " child care custodian" as defined by ne Act, and therefore has a mandatory duty to report instances of child abuse nder it.

OHN K. VAN DE KAMP
ttorney General

onald M. Weiskopf
eputy

FN1]. The Child Abuse and Neglect Reporting Act (the " Act") is codified as rticle 2.5 (§§ 11165-11175.5) of chapter 2 of Title 1 of Part 4 of the Penal Code. efore 1987, when it received its current name (§ 11164 added by Stats. 1987, ch. 444, 1.5), it was sometimes referred to as the Child Abuse ReportingLaw. (See .g., Planned Parenthood Affiliates v. Van de Kamp (1986) 181 Cal.App.3d 245, 255; 7 Ops.Cal.Atty.Gen. 235 (1984); 65 Ops.Cal.Atty.Gen. 345, 345 (1982).) All nidentified statutory references herein will be to the Act as codified in the enal Code.

FN2]. Section 94311 of the Education Code provides that no postsecondary ducational institution may offer courses of education leading to educational, rofessional, technological, or vocational objectives unless it has been approved r authorized by the Superintendent of Public Instruction. One of the bases on hich that approval/authorization is given is where " an institution ... has coreditation of the institution, program or specific course of study ... by a ational or applicable regional accrediting agency recognized by the United States epartment of Education:..." (Ed.Code, § 94311, subd. (c).)

FN3]. Under California's Compulsory Education Law (Ed.Code, § 48000 et seq.), very person between the ages of 6 and 16, not otherwise exempt, is required to ttend public full-time day school. (Ed.Code, § 48200.) However, that obligation ay be satisfied, inter alia, by attending a private full-time day school that eets certain statutory standards. (Id., § 48220.) Among them is that the rivate schools " offer instruction in the several branches of study required to be aught in the public schools of the state." (Id., § 48222; cf., 70 ps.Cal.Atty.Gen. 282, 284-285 (1987.)

FN4]. Subdivision (b) of section 11165.7 details they type of training contemplated. The Legislature has provided that " [t]raining in the duties mposed by [the Act] shall include training in child abuse identification and training in child abuse reporting" (§ 11165.7, subd. (b)) and that " [a]s part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements...." (Ibid.) It has also provided that " [s]chool districts which do not train the employees specified in subdivision (a)

[of section 11165.7] in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided." (Id., subd. (c).)

[FN5]. Over the years the Legislature also lessened the degree of certainty in the basis upon which a report would have to be made and increased the degree of civil and criminal immunity afforded mandatory reporters. (See Krikorian v. Barry, supra, 196 Cal.App.3d 1216-1217.) This was done to rectify the problem of inadequate child abuse reporting by removing two of the impediments which deterred professionals from reporting suspected cases of child abuse. (Ibid.)

[FN6]. As amended in 1971, section 11161.5 provided in pertinent part that:
" ...in any case in which a minor is observed by ... any teacher or [sic, of] any public or private school ... and it appears to the ... teacher ... from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, he shall report such fact by telephone and in writing to the local police authority having jurisdiction and to the juvenile probation department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries. [¶] [¶] No person shall incur any civil or criminal liability as a result of making any report authorized by this section." (Stats. 1971, ch. 1729, § 7, supra.)
In 1973 the technical correction was made to have the section read " any teacher of any public or private school." (Stats 1973, ch. 1151, § 1, p. 2380; cf., 2 Stats. 1973 [Sum.Dig. SB 398] at p. 182.)

[FN7]. Before 1980, the number of different callings on which section 11161.5 imposed a duty to report child abuse had grown to twenty. (Stats. 1978, ch. 136, § 1, p. 358.) The 1980 amendments repealed that section (Stats. 1980, ch. 1071, § 1, supra) and adopted a new section 11165 which defined the mandatory reporters in broad categories-i.e, " child care custodian[s]" (subd. (h)), " medical practitioner[s]" (subd. (i)), " nonmedical practitioner [s]" (subd. (j)) and employees of " child protective agenc[ies]" (subd. (k)).. (Id., 4, pp. 3421-3422; see, 65 Ops.Cal.Atty.Gen. 345, 346, supra; cf., Planned Parenthood Affiliates v. Van de Kamp, supra, 181 Cal.App.3d 245, 258.)

[FN8]. In support of this argument attention is also drawn to subdivision (a) of section 11166.5 of the Act which requires " any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, [to] sign a statement ... to the effect that he or she has knowledge of the [mandatory reporting] provisions of sections 11166. It is claimed that the Legislature would not have meant to impose such a precondition of employment on those in the private sector. This much of the argument we reject on the basis that the definition of child care custodian itself includes persons in the private sector.

72 Ops. Cal. Atty. Gen. 216, 1989 WL 408277 (Cal.A.G.)
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CHILD ABUSE

Educator's Responsibilities

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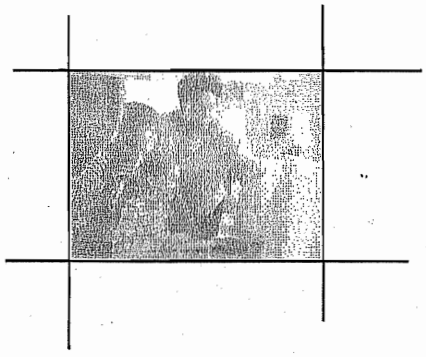

Crime and Violence Prevention Center
California Attorney General's Office

Edmund G. Brown Jr.
Attorney General

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Please note that the California Child Abuse and Neglect Reporting Act may have been amended since the printing of this material. For the most current reporting law information, please go to www.leginfo.ca.gov. This material has been prepared to assist educators in determining their reporting responsibilities. It is not intended to be and should not be considered legal advice. In the event there are questions about reporting responsibilities in a specific case, the advice of legal counsel should be sought.

Introduction

Tragically, it is estimated that three children die each day in this nation as a result of child abuse and neglect. Every day, thousands of children are abused, often by a member of their own family, an unmarried parent's partner, or a caregiver.

The California Department of Social Services estimated that 378,301 referrals for investigation of child abuse and neglect involving 713,391 children occurred in 2004.

Each incident of child abuse is a national tragedy. No civilized society can overlook the maltreatment of children. Identification of abuse is the first step to strengthening our efforts in prevention and early intervention with children, youth and troubled families. Citizens and professionals who deal with children play a critical role in protecting innocent victims who suffer from abuse.

Under California state law, specific professional groups, including educators, are mandated to report known or suspected child abuse. Knowledge or reasonable suspicion of child abuse is not privileged information and must be reported. This information may be the only way a child receives help.

As an educator, you are in a unique position to help abused and neglected children escape pain, suffering, and even death. This handbook is designed to assist you in identifying the symptoms of child abuse and understanding your reporting responsibilities. It also answers some frequently asked questions. Together, we can stop the abuse and give our children a chance at a safe, happy, and productive life.

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What Is Child Abuse?

Mandated reporters (see page 14) are required by law to report known or suspected child abuse.

The law defines child abuse as:

- Physical abuse
- Physical neglect
- Sexual abuse
- Emotional maltreatment

Indicators of child abuse are listed in this section to help educators and other school personnel meet their responsibilities under the Child Abuse and Neglect Reporting Act. (Pen. Code, §11164 et. seq.) Of course, one of the most important reasons for suspecting child abuse is that a child has told you that someone has hurt him or her.

Physical Abuse

The term "child abuse" includes "physical injury inflicted by other than accidental means upon a child by another person." (Pen. Code, §11165.6.) Physical abuse most often involves severe corporal punishment in which a frustrated or angry parent or other caregiver strikes, shakes, or throws a child. Intentional assault such as burning, biting, cutting, poking, twisting limbs, or otherwise torturing a child is also included in this category of child abuse. Indicators of physical abuse can be physical or behavioral.

Physical indicators

The type and location of an injury can help distinguish accidental injuries from injuries inflicted by physical abuse. Typical locations of injuries resulting from abuse are the back surface of a child's body from the neck to the knees, injuries to the face, and injuries to multiple parts of the body. Injuries to the shins, elbows, knees, and forehead are not typically sustained from abuse.

Types of injuries indicative of physical abuse include:

- Bruises
- Burns
- Bite marks
- Abrasions
- Lacerations
- Head injuries
- Internal Injuries
- Fractures

Behavioral indicators

The following behaviors are often exhibited by abused children:

- The child is frightened of parent or caretaker or, at the other extreme, is overprotective of parent or caretaker.
- The child is excessively passive, overly compliant, apathetic, withdrawn, or fearful or, at the other extreme, is excessively aggressive, destructive, or physically violent.
- The child and/or parent or caretaker attempts to hide injuries to the child (e.g., the child wears excessive layers of clothing, especially in hot weather; the child is frequently absent from school or misses physical education classes if changing into gym clothes is required).
- The child is frightened of going home.
- The child is clingy and forms indiscriminate attachments.
- The child is apprehensive when other children cry.
- The child is wary of physical contact with adults.
- The child exhibits drastic behavioral changes in and out of presence of parent or caretaker.
- The child is hypervigilant; the child has difficulty sitting or walking.
- The child suffers from seizures or vomiting.
- The child, as an adolescent, exhibits depression, self-mutilation, suicide attempts, substance abuse, or sleeping and eating disorders.

Additional indicators

Other indicators of physical abuse may include:

- A statement by the child that the injury was caused by abuse. (Please note: abused children may deny abuse.)

- Knowledge that the child's injury is unusual for the child's specific age group (e.g., any fracture in an infant).
- Knowledge of the child's history of previous or recurrent injuries.
- Unexplained injuries (e.g., parent is unable to explain reason for injury; there are discrepancies in explanation; blame is placed on a third party; explanations are inconsistent with medical diagnosis).
- Parent or caretaker delays seeking or fails to seek medical care for the child's injury.

Physical Neglect

Neglect is the negligent treatment or maltreatment of a child by a parent or caretaker under circumstances indicating harm or threatened harm to the child's health or welfare. (Pen. Code, §11165.2.) It includes both acts and omissions on the part of the parent or caretaker. California law defines two categories of neglect: severe neglect and general neglect.

Severe neglect means the negligent failure of a parent or caretaker to protect the child from severe malnutrition or a medically diagnosed non-organic failure to thrive. It also includes situations where the parent or caretaker willfully causes or permits the body or health of the child to be endangered. This includes the intentional failure to provide adequate food, clothing, shelter, or medical care. (Pen. Code, §11165.2, subd. (a).)

General neglect means the negligent failure of a parent or caretaker to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred. (Pen. Code, §11165.2, subd. (b).)

Indicators of physical neglect

Neglect may be suspected when one or more of the following conditions exist:

- The child is lacking adequate medical or dental care.
- The child is often sleepy or hungry.

- The child is often dirty, demonstrates poor personal hygiene, or is inadequately dressed for weather conditions.
- There is evidence of poor or inadequate supervision for the child's age.
- The conditions in the home are unsafe or unsanitary.
- The child appears to be malnourished.
- The child is depressed, withdrawn, or apathetic, exhibits antisocial or destructive behavior, shows fearfulness, or suffers from substance abuse, speech, eating, or habit disorders (such as biting, rocking, or whining).

While some of these conditions may exist in any home, it is the extreme or persistent presence of these conditions that indicate a degree of neglect. Disarray and an untidy home do not necessarily mean the home is unfit. But extreme conditions resulting in an "unfit home" constitute severe neglect and may justify protective custody and juvenile dependency proceedings.

Sexual Abuse

Sexual abuse is defined as acts of sexual assault or sexual exploitation of a minor. (Pen. Code, §11165.1.) Sexual abuse encompasses a broad spectrum of behavior and may consist of many acts over a long period of time (chronic molestation) or a single incident. Victims range in age from less than one year through adolescence.

Sexual assault includes: rape; gang rape (or rape in concert); statutory rape, when the offender is 21 or older and the victim is under 16; incest; sodomy; lewd or lascivious acts with a child under 14 years of age, or with a 14 or 15 year old when the offender is at least 10 years older; oral copulation; sexual penetration; and child molestation. (Pen. Code, §11165.1, subd. (a).)

Sexual exploitation includes conduct or activities related to child pornography and child prostitution. (Pen. Code, §11165.1, subd. (c).)

The nature of sexual abuse, the guilt and shame of the child victim, and the possible involvement of parents, stepparents,

friends, or others in a child caretaker role, make it extremely difficult for children to report sexual abuse.

Sometimes a child who does seek help is accused of making up stories. Many people do not believe the child because the abuser seems well-adjusted and they cannot believe this person could be capable of sexual abuse. Also, when the matter does come to the attention of authorities, the child may give in to pressure from parents or caretakers and deny that any sexual abuse has occurred. The child may feel guilty about "turning in" the abuser or breaking up the family and therefore recant or change his or her story. This pattern of denial is typical and may unfortunately cause people to be skeptical of a child's complaint of sexual abuse.

The sad reality of sexual abuse is that without third-party reporting, the child often remains trapped in secrecy by shame, fear, and threats by the abuser.

Indicators of sexual abuse

Indicators of sexual abuse may surface through a child's history, physical symptoms, and behavior. Some of these indicators, taken separately, may not be symptomatic of sexual abuse. They are listed below as a guide and should be examined in the context of other factors.

History

- The single most important indicator of sexual abuse is disclosure by a child to a friend, classmate, teacher, friend's mother, or other trusted adult. The disclosure may be direct or indirect (e.g., "I know someone..." or "What would you do if...?" or "I heard something about somebody..."). It is not uncommon for the disclosure by a child experiencing chronic or acute sexual abuse to be delayed. Children rarely fabricate these accounts; they should be taken seriously.
- A child wears torn, stained, or bloody underclothing.
- A child has an injury or disease (such as vaginal trauma or sexually transmitted disease) which is unusual for his or her specific age group.

- A child has a history of previous or recurrent injuries or diseases.
- A child has unexplained injuries or a disease (i.e., parent or caretaker is unable to explain reason for injury or disease); there are discrepancies in explanation; blame is placed on a third party; explanations are inconsistent with medical diagnosis.
- A young girl is pregnant. (Note that pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse. (Pen. Code, §11166, subd. (a)(1).)

Physical symptoms

- Sexually transmitted diseases.
- Genital discharge or infection.
- Physical trauma or irritation to the anal or genital area (e.g., pain, itching, swelling, bruising, bleeding, lacerations, or abrasions), especially if the injuries are unexplained or there is an inconsistent explanation.
- Pain during urination or defecation.
- Difficulty in walking or sitting due to genital or anal pain.
- Psychosomatic symptoms (e.g., stomachaches or headaches).

Sexual behaviors of children

- Detailed and age-inappropriate understanding of sexual behavior (especially by younger children).
- Inappropriate, unusual, or aggressive sexual behavior with peers or toys.
- Compulsive indiscreet masturbation.
- Excessive curiosity about sexual matters and/or genitalia.
- Unusual seductiveness with classmates, teachers, and others.
- Excessive concern about homosexuality, especially by boys.

Behavioral indicators in younger children

- Enuresis (wetting pants or wetting bed).
- Fecal soiling.
- Eating disturbances (such as overeating or undereating).
- Fears or phobias.
- Overly compulsive behavior.

- School problems or significant change in school performance (attitude and grades).
- Age-inappropriate behavior that includes pseudomaturity or regressive behavior (i.e., bed wetting or thumb sucking).
- Inability to concentrate.
- Sleeping disturbances (such as nightmares, fear of falling asleep, fretful sleep pattern or sleeping long hours).
- Drastic behavior changes.
- Speech disorders.
- Frightened of parents or caretaker or of going home.

Behavioral indicators in older children and adolescents

- Withdrawal.
- Chronic fatigue.
- Clinical depression and/or apathy.
- Overly compliant behavior.
- Poor hygiene or excessive bathing.
- Poor peer relations and social skills; inability to make friends; running away from home.
- Aggressive, antisocial, or delinquent behavior.
- Alcohol or drug abuse.
- Prostitution or excessive promiscuity.
- School problems (such as frequent absences or a sudden drop in school performance).
- Refusal to dress for physical education.
- Non-participation in sports and social activities.
- Fear of showers and/or restrooms.
- Fear of home life (as demonstrated by arriving at school early and/or leaving late).
- Sudden fear of other things (such as going outside or participating in familiar activities).
- Extraordinary fear of males.
- Self-consciousness of body beyond that expected for age.
- Sudden acquisition of money, new clothes, or gifts with no reasonable explanation.
- Suicide attempt or other self-destructive behavior.
- Crying without provocation.
- Setting fires.

Incestuous/intrafamilial sexual abuse

Sexual abuse of children within the family is the most hidden form of child abuse. In spite of its taboo and the difficulty of detection, some researchers believe it may be even more common than physical abuse.

In discussing sexual abuse, incest means sexual activity between certain close relatives (e.g., parent and child; siblings; grandparent and grandchild); intrafamilial means sexual activity between persons in a family setting, (e.g., stepparent and stepchild; parent's live-in partner and parent's child).

In most reported cases, the father or a male caretaker is the initiator of sexual activity and the victim is a female child. However, boys are also victims, more often than previously believed. Embarrassment and shame often deter children from reporting sexual abuse.

Sexual abuse of a child may begin at any age, from infancy through adolescence. The first incident of sexual abuse may be followed by guilt-provoking demands for secrecy and threats of terrible harm or consequences if the secret is revealed. The child may then fear disgrace, hatred, or blame for breaking up the family if he or she reveals the secret.

Regardless of how gentle, trivial, or coincidental the first incident may have been, sexual abuse tends to recur and escalate over time. The child may eventually blame himself or herself and believe that he or she may have tempted or provoked the abuser.

Although a mother is usually expected to protect her child, she may purposely stay isolated from the problem. By being distant and uncommunicative, or by disapproving of sexual matters, the mother may cause the child to be afraid to confide in her about the abuse.

One reason for the mother's behavior may be extreme insecurity. The potential loss of her husband or partner, and the economic security he provides, may be so threatening to her that she cannot

allow herself to believe or even to suspect that her child is at risk. Another reason for the mother's behavior may be that she was a victim of sexual abuse herself and she may consequently not trust her judgment or her right to challenge male authority. For these same reasons some mothers actually know their children are sexually abused but choose to look the other way.

Until the child is old enough to realize that incest is not a common occurrence, and until the child is strong enough to obtain help outside the family, there is no escape. This reality may change, though, if the abuse is reported by an outside party.

Extrafamilial sexual abuse

Children who are abused by someone outside their family typically know their molester, commonly through contact at school or in the neighborhood, or through involvement in youth programs, churches, or other recreational activities. People who molest children fall into all age categories, including pre-teens and the elderly. Although there are several classifications of child molesters, pedophiles present the greatest danger to children because their main sexual interest is children.

Pedophiles tend to be well-liked by children. They often choose work in professions or volunteer organizations which allow them easy access to children and in which they can develop the trust and respect of children and their parents. They believe sex with children is appropriate and even beneficial. They lure children into sexual relationships with love, rewards, promises, and gifts.

Although most cases of extrafamilial abuse involve a perpetrator known to the child, cases of abuse by strangers do occur. Typically in these cases, the stranger will entice the child ("Will you help me find my puppy?"); or convince the child that his or her parent requested that the stranger pick up the child; or the stranger may simply abduct the child.

Emotional Maltreatment

Emotional maltreatment consists of emotional abuse and emotional deprivation or neglect.

Emotional abuse

Mandated reporters **may** report suspected emotional abuse. (Pen. Code, §11166.05.) However, suspected cases of severe emotional abuse that constitute willfully causing or permitting a child to suffer unjustifiable mental suffering **must** be reported. (Pen. Code, §11165.3.)

Just as physical injuries can incapacitate and scar a child, emotional maltreatment can similarly cripple and handicap a child emotionally, behaviorally, and intellectually. Severe psychological disorders have been traced to excessively distorted parental attitudes and actions. Emotional and behavioral problems, in varying degrees, are common among children whose parents abuse them emotionally.

Examples of how parents inflict emotional abuse on their children include excessive verbal assaults (such as belittling, screaming, threatening, blaming, or using sarcasm); unpredictable responses or inconsistency; continual negative moods; constant family discord; and double-message communication.

Behavioral indicators of emotional abuse

Emotional abuse may be suspected if a child:

- Is withdrawn, depressed, or apathetic.
- Is clingy and forms indiscriminate attachments.
- "Acts out" and is considered a behavior problem.
- Exhibits exaggerated fearfulness.
- Is overly rigid in conforming to instructions of teachers, doctors, and other adults.
- Suffers from sleep, speech, or eating disorders.
- Displays signs of emotional turmoil that include repetitive, rhythmic movements (such as rocking, whining, or picking at scabs).
- Pays inordinate attention to details or exhibits little or no verbal or physical communication with others.

- Suffers from enuresis (wetting pants or bed) or fecal soiling.
- Unwittingly makes comments such as "Mommy always tells me I'm bad."

The behavioral patterns mentioned may, of course, be due to other causes, but the suspicion of emotional abuse should not be dismissed.

Behavioral indicators of parents or caretakers

The following behavior exhibited by a parent or caretaker may suggest that a child is being emotionally abused:

- The parent or caretaker burdens the child with demands which are based on unreasonable or impossible expectations or are beyond his or her development capacity.
- The child is used as a "battleground" for marital conflicts.
- The child is used to satisfy the parent's or caretaker's own ego needs and the child is neither old nor mature enough to understand.
- The child is "objectified" by the parent or caretaker (i.e., the parent or caretaker refers to the child as "it" — "it" cried or "it" died).
- The child is exposed to or a witness of domestic violence.

Emotional abuse can become a self-fulfilling prophecy. For example, if a child is degraded enough, the child may "live up" to the image communicated by the abusing parent or caretaker.

Emotional abuse is very difficult to prove. Cumulative documentation by a law enforcement or child welfare agency may be necessary for effective intervention. Therefore, emotionally abused children should be referred for treatment as soon as possible.

Emotional deprivation

Emotional deprivation or neglect has been defined as "the deprivation suffered by children when their parents do not provide the normal experiences producing feelings of being loved, wanted, secure and worthy." (Child Abuse Prevention Handbook...and intervention guide, January 2006, Page 11)

Behavioral indicators of emotional deprivation
Emotional deprivation may be suspected if a child:

- Refuses to eat adequate amounts of food and thus is very frail.
- Is unable to perform normal learned functions for a given age (such as walking or talking).
- Displays antisocial behavior (such as aggression or disruption) or obvious delinquent behavior (such as drug abuse or vandalism); conversely, an emotionally deprived child may be abnormally unresponsive, sad, or withdrawn.
- Constantly "seeks out" and "pesters" other adults (such as teachers or neighbors) for attention and affection.
- Displays exaggerated fears.

When a parent ignores a child because of the parent's use of drugs or alcohol, psychiatric disturbances, personal problems, or other preoccupying situations, serious consequences may occur. However, these situations are not reportable unless they constitute a form of legally defined abuse.

What Is Not Child Abuse?

Listed below are descriptions of situations or circumstances which are not child abuse for purposes of the California Child Abuse and Neglect Reporting Act:

- Corporal punishment that is not cruel or inhuman or does not result in a traumatic condition. (Pen. Code, § 11165.4.)
- Injuries caused by two children fighting during a mutual altercation. (Pen. Code, §11165.6.)
- An injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer. (Pen. Code, §11165.6.)
- Reasonable and necessary force used by public school officials to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of a weapon or other dangerous objects. (Pen. Code, §11165.4.)

- Voluntary sexual conduct between minors who are both under the age of 14 and who are of similar age and sophistication. (People v. Stockton Pregnancy Control Medical Clinic, Inc. (1988) 203 Cal.App.3d 225, 233-240.)
- Pregnancy of a minor, does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse. (Pen. Code, §11166, subd. (a)(1).)
- Treatment by spiritual means as provided by 16509.1 of the Welfare and Institutions Code. (Pen. Code, §11165.2 (b).)
- An informed and appropriate medical decision. (Pen. Code, §11165.2 (b).)
- Not receiving specific medical treatment for religious reasons. (Pen. Code, § 11165.2 (b).)
- Positive toxicology screen at the time of delivery of an infant. (Pen. Code, §11165.13.)

What Are Educator's Responsibilities?

School teachers, principals, counselors, nurses, supervisors of child welfare and attendance, and other designated school personnel who are mandated to report known or reasonably suspected instances of child abuse play a critical role in the early detection of child abuse. Symptoms or signs of abuse are often first seen by school personnel. Because immediate investigation by a law enforcement agency, or welfare department may save a child from repeated abuse, school personnel should not hesitate to report suspicious injuries or behavior. **Your duty is to report, not investigate.**

In the discussion below, answers are provided to some of the common concerns expressed by educators regarding their legal responsibility to report known or reasonably suspected child abuse.

What does the Child Abuse and Neglect Reporting Act require?

The Child Abuse and Neglect Reporting Act (Pen. Code, §11164 et seq.) requires certain professionals and lay persons

who have a special working relationship or regular contact with children to report known or suspected child abuse to the proper authorities. The following is an excerpt from the law:

> *(a) ...a mandated reporter shall make a report to [the police or sheriff's department, the county probation department (if designated by the county to receive such reports), or the county welfare department] whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.*
>
> *(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect....(Pen. Code, §11166.)*

Which professionals are required by law to report suspected child abuse?

Penal Code section 11165.7 defines "mandated reporters" of child abuse as follows:

(1) A teacher.
(2) An instructional aide.
(3) A teacher's aide or teacher's assistant employed by any public or private school.
(4) A classified employee of any public school.
(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.
(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
(11) A Head Start program teacher.
(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.
(13) A public assistance worker.
(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
(15) A social worker, probation officer, or parole officer.
(16) An employee of a school district police or security department.
(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.
(20) A firefighter, except for volunteer firefighters.
(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.
(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.
(24) A marriage, family and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.
(26) A state or county public health employee who treats a minor for venereal disease or any other condition.
(27) A coroner.
(28) A medical examiner or any other person who performs autopsies.
(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.
(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.
(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:
(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.
(B) "Humane society officer" means any person ap pointed or employed by a public or private entity as a

humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

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

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

Are volunteers mandated reporters?

No, unless otherwise specified in the law. However, volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse and are further encouraged to report known or suspected instances of child abuse and neglect to an agency specified in 11165.9. (Pen Code, §11165.7 (b).) Public and private organizations are encouraged to provide their volunteers with training on identification and reporting of child abuse and neglect. (Pen. Code, §11165.7 (f).)

Does the law provide immunity from civil or criminal liability for mandated reporters?

Yes. Mandated reporters are provided immunity from civil or criminal liability as a result of making a required or authorized report of known or suspected child abuse.

This immunity applies even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse and neglect

outside his or her professional capacity or outside the scope of his or her employment. (Pen. Code, §11172, subd. (a).)

Other persons who report are not liable either civil or criminally unless it can be proven that a false report was made and that the person who made it knew the report was false or made the report with reckless disregard of its truth or falsity. Any person who makes such a report is liable for any damages caused. (Pen. Code, §11172, subd. (a).)

May a mandated reporter who is sued for reporting child abuse be reimbursed for attorney's fees?

Yes. In the event a civil action is brought against a mandated reporter as a result of a required or authorized report of child abuse, he or she may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees and costs incurred in the action if he or she prevails in the action or the court dismisses the action upon a demurrer or motion for summary judgment. The maximum hourly rate for recovery of attorney's fees is that charged by the State Attorney General at the time of the award and the maximum recovery is $50,000. Public entities providing a defense pursuant to Government Code Section 995 may not file a claim for attorney's fees and costs. (Pen. Code, §11172, subd. (c).)

Are employers required to inform mandated reporters of their legal responsibilities to report?

Yes. Any mandated reporter who enters into employment on and after January 1, 1985, "prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee." (Pen. Code, §11166.5, subd. (a).)

Further, employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by the Child Abuse and Neglect Reporting Act. The training shall include training in child abuse identification and reporting. Whether or not employers provide training, they shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights. (Pen. Code, §11165.7 (c).)

School districts that do not train their employees who are mandated reporters in the duties of mandated reporters under the Child Abuse and Neglect Reporting Act shall report to the State Department of Education the reasons why this training is not provided. (Pen. Code, §11165.7 (d).)

Unless otherwise provided, the absence of training shall not excuse a mandated reporter from the duties imposed by the Child Abuse and Neglect Reporting Act. (Pen. Code, §11165.7 (e).)

If I do not report, may I be prosecuted?
Yes. Failure to report by telephone immediately, or as soon as practicably possible, and in writing within 36 hours is a misdemeanor "punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both imprisonment and fine." (Pen. Code, §11166, subd. (c).) However, if the mandated reporter's willful failure to report child abuse or neglect results in great bodily injury or death to a child, the mandated reporter "shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment." (Pen. Code, §11166.01 (b).) Basically, the purpose of this potential penalty is to ensure that mandated reporters will report all known or reasonably suspected incidents of child abuse immediately to the local police or sheriff's department, the county probation department (if designated by the county to receive such reports), or the county welfare department.

May I lose my credentials if I fail to report?
Yes. Educators who fail to report risk loss of their license or credential. "The Commission for Teacher Preparation and Licensing shall privately admonish, publicly reprove, revoke, or suspend [a credential] for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system...." (Educ. Code, §44421.) Moreover, a failure to report may result in personal civil liability. (See Landeros v. Flood (1975) 17Cal.3d 399, 423-415.)

How do I report?
A mandated reporter must immediately, or as soon as practicably possible, report by telephone a known or suspected incidence of child abuse (Pen. Code, §11166. subd. (a)) to the police or sheriff's department, county probation department (if designated by the county to receive mandated reports), or county welfare department. The following information, if known, shall be provided at the time of the call:

- Name, business address, and telephone number of the mandated reporter.
- Child's name, address and present location and, where applicable, the child's school, grade and class.
- Names, addresses, and telephone number of the child's parents or guardians.
- Source of the information that lead to the suspicion of child abuse.
- Name, address, telephone number and other personal information of person(s) who might have abused the child. (Pen. Code, §11167, subd. (a).)

The mandated reporter shall make a report even if some of this information is not known or uncertain to him or her. (Pen. Code, §11167, subd. (a).)

The call must be followed within 36 hours by a followup written report to be sent, faxed or electronically transmitted to the agency to which the telephone report was made. (Pen. Code, §11166, subd. (a).) The written report must be filed on Department of Justice Form SS 8572, that can be downloaded from the Attorney

General's Web site at *www.ag.ca.gov*. (Click on Child Protection Program, click on Forms, click on Suspected Child Abuse Report Form. Instructions on completing the form are also included on the site. (See Appendix for a sample of this form.)

Does the law allow schools to develop special procedures for reporting child abuse?

Yes. It has been the practice of many schools to develop special procedures for reporting child abuse. School personnel who are mandated to report should be aware, however, that regardless of the existence of such procedures, reporting to a police or sheriff's department, probation department, or welfare department is still required by law, and "good intentions" may not be a defense in a criminal or civil action initiated for failure to report.

Furthermore, reporting is an individual responsibility. A mandated reporter may not be absolved of responsibility by relying on a supervisor or administrator to meet his or her individual reporting responsibility. (Pen. Code, §11166, subd. (i)(3).)

The law protects an individual who reports known or suspected child abuse to a police or sheriff's department, probation department, or welfare department so that he or she may do so without fear of any sanction for making the report. The supervisor or administrator may ask that the employee notify him or her that a report is being made; however, the employee cannot be prohibited or impeded from making a report directly to a police or sheriff's department, probation department, or welfare department. (Pen. Code, §11166, subd. (j) (1).) Furthermore, an employee making a report may not be required to disclose his or her identity to the employer. (Pen. Code, §11166, subd. (j) (2).) In addition, any supervisor or administrator who "impedes or inhibits" the reporting responsibility is punishable by a fine not to exceed one thousand dollars ($1,000) or by not more than six months in a county jail, or by both a fine and imprisonment. (Pen. Code, §11166.01 (a).) However, if great bodily injury or death to a child results from "impeding or inhibiting" the reporting of child abuse and neglect, the person is subject to a fine of not more than five thousand dollars ($5,000), by not more than one year in a county

jail, or by both a fine and imprisonment. (Pen. Code, §11166.01 (b).)

When two or more mandated reporters jointly have knowledge of a known or suspected instance of child abuse, they may elect one person to report. However, if the person elected to report fails to do so and the other person has knowledge of that fact, then the other person is responsible for making the report. (Pen. Code, §11166, subd. (h).)

What happens to the report?

Reports of child abuse are investigated either by the local law enforcement agency and/or by the county probation or welfare department. Reports received by the county probation or welfare department, except for reports involving general neglect and reports based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, shall be cross-reported immediately, or as soon as possible, to the local law enforcement agency having jurisdiction. (Pen. Code, §11166, subd. (j).) Law enforcement is also required to cross-report immediately, or as soon as possible, to the county welfare or probation department. (Pen. Code, §11166, subd. (k).) The reporting law is designed to ensure that law enforcement, county welfare, and probation departments receive and review all reports whether initially reported to them or to another agency designated in Penal Code section 11165.9. (Pen. Code, §11166, subds. (j) (k).)

Those required to report child abuse should be aware that reporting does not always mean that criminal or civil proceedings will be initiated against the suspected abuser. If an investigation does not reveal evidence of child abuse but suggests a potential of abuse or other family problems a child welfare agency may intervene and offer appropriate services to prevent abuse before it happens.

Are mandated reporters required to give their names when they make a report?

Yes. (Pen. Code, §11167, subd. (a).)

Is the identity of a mandated reporter confidential?
Yes. The identify of a person who reports known or suspected child abuse is confidential and may only be disclosed as follows:

- Between agencies receiving or investigating the report.
- To the district attorney in a criminal prosecution.
- To the district attorney in an action initiated under Welfare and Institutions Code Section 602 (minors violating laws defining crime, wards of court) arising from alleged child abuse.
- To the child's appointed counsel pursuant to Welfare and Institutions Code Section 317, subdivision (c).
- To the county counsel or district attorney in a proceeding under Family Code Section 7800 et seq. (termination of parental rights) or Welfare and Institutions Code Section 300 (dependent children).
- To a licensing agency when abuse in out-of-home care is reasonably suspected.
- By court order.
- When the reporter waives confidentiality. (Pen. Code, §11167, subd. (d) (1).)

Are reports of suspected child abuse confidential?
Yes. Required reports of suspected child abuse are confidential. The reports, and the information contained therein, may be disclosed only to the following:

- To persons or agencies to whom the reporter's identity may be disclosed. (See above.)
- To persons or agencies to whom disclosure of information maintained in the Department of Justice's Child Abuse Central Index is permitted under Penal Code Section 11170, subdivision (b), or Penal Code Section 11170.5, subdivision (a).
- To persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Penal Code Section 11174 (investigation of abuse in out-of-home care).
- To multidisciplinary personnel teams as defined in Welfare and Institutions Code Section 18951, subdivision (d).
- To persons or agencies responsible for the licensing of facilities that care for children, as specified in Penal Code Section 11165.7.

- To the State Department of Social Services or any county licensing agency which has contracted with the state when an individual has applied for a community care license or child day care license, when an individual has applied for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility.
- To hospital scan teams.
- To coroners and medical examiners when conducting a postmortem examination of a child.
- To the Board of Prison Terms when subpoenaed for parole revocation proceedings against a parolee charged with abuse.
- To personnel from an agency responsible for making a placement of a child.
- To persons who have been identified by the Department of Justice pursuant to Penal Code Section 11170, subdivision (b) (6) or (c), as listed in the Child Abuse Central Index. (The report may be redacted in order to maintain the confi dentiality of the person who made the report.)
- To out-of-state law enforcement agencies conducting an investigation of child abuse, but only when the agency makes the request for the report in writing and on official letterhead and identifies the suspected abuser or victim by name.
- To persons who have verified with the Department of Justice pursuant to Penal Code Section 11170, subdivision (e), that they are listed in the Child Abuse Central Index. (The report may be redacted in order to maintain the confidentiality of the person who made the report.)
- To the chairperson of a county child death review team, or to his or her designee. (Pen. Code, § 11167.5, subd. (b).)

Any violation of these confidentiality provisions is a misdemeanor punishable by up to six months in the county jail or by a fine of $500 or by both. (Pen. Code, § 11167.5 subd. (a).)

May a school district release information from a pupil's record in an emergency without parental consent or judicial order?

Yes. If a law enforcement agency needs information from a pupil's record in an emergency to protect the health or safety of that student or another person, the school may disclose that information (Educ. Code, §49076, subd. (b)(1).) This is a closely limited rule and, in fact, replaces a statute that had given more disclosure rights to the police.

Thus, if a law enforcement agency needs information from a school record, it must comply with Education Code Section 49076, subdivision (b)(1). When grounds for access are not clearly established, consultation with county counsel or school district legal staff is advisable.

Is a school official required to notify a parent, guardian, or responsible relative when a minor pupil who is a victim of suspected child abuse is released into the custody of a peace officer?

No. If a school releases a minor pupil who is suspected of being abused into the custody of a peace officer, and the school later receives an inquiry from the minor's parent or guardian as to the student's location, the parent or guardian should be referred to the law enforcement agency that took the minor into protective custody. The law specifies that:

> [T]he school official shall provide the peace officer with the address and telephone number of the minor's parent or guardian. The peace officer shall take immediate steps to notify the parent, guardian, or responsible relative of the minor that the minor is in custody and the place where he or she is being held. If the officer has a reasonable belief that the minor would be endangered by a disclosure of the place where the minor is being held, or that the disclosure would cause the custody of the minor to be disturbed, the officer may refuse to disclose the place where the minor is being held for a period

not to exceed 24 hours. The officer shall, however, inform the parent, guardian, or responsible relative whether the child requires and is receiving medical or other treatment. The juvenile court shall review any decision not to disclose the place where the minor is being held at a subsequent detention hearing. (Educ. Code, §48906.)

Before releasing a child who is suspected of being abused to a peace officer, the school should obtain the officer's name, badge number, and telephone number so that it can later give it to a parent or guardian who inquires about the child's removal.

May school personnel be present during an officer's interview of a child abuse victim on school grounds?
Yes. The child must be given the option of being interviewed in private or selecting any adult who is a member of the school staff, including any certificated or classified employee or volunteer aide, to be present during the interview. The purpose of having a staff member at the interview is to lend support to the child and help him or her feel as comfortable as possible. However, the staff member must not participate in the interview or discuss the facts or circumstances of the case with the child. Furthermore, the staff member is subject to the reporting law's confidentiality requirements. A violation of confidentiality is a misdemeanor punishable by up to six months in jail or by a fine of $500 or by both. Lastly, a staff member selected by a child may decline the request to be present at the interview. (Pen. Code, §11174.3, subd. (a).)

Appendix

Suspected Child Abuse Report
DOJ SS 8572

SUSPECTED CHILD ABUSE REPORT

To Be Completed by **Mandated Child Abuse Reporters**
Pursuant to Penal Code Section 11166

CASE NAME: _____

PLEASE PRINT OR TYPE

CASE NUMBER: _____

A. REPORTING PARTY

NAME OF MANDATED REPORTER	TITLE		MANDATED REPORTER CATEGORY
REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS	Street	City / Zip	DID MANDATED REPORTER WITNESS THE INCIDENT? ☐ YES ☐ NO
REPORTER'S TELEPHONE (DAYTIME) ( )	SIGNATURE		TODAY'S DATE

B. REPORT NOTIFICATION

☐ LAW ENFORCEMENT ☐ COUNTY PROBATION ☐ COUNTY WELFARE / CPS (Child Protective Services)	AGENCY	
ADDRESS Street / City / Zip		DATE/TIME OF PHONE CALL
OFFICIAL CONTACTED - TITLE		TELEPHONE ( )

C. VICTIM (One report per victim)

NAME (LAST, FIRST, MIDDLE)		BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
ADDRESS Street / City / Zip		TELEPHONE ( )		
PRESENT LOCATION OF VICTIM	SCHOOL	CLASS		GRADE
PHYSICALLY DISABLED? ☐ YES ☐ NO	DEVELOPMENTALLY DISABLED? ☐ YES ☐ NO	OTHER DISABILITY (SPECIFY)	PRIMARY LANGUAGE SPOKEN IN HOME	
IN FOSTER CARE? ☐ YES ☐ NO	IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE: ☐ DAY CARE ☐ CHILD CARE CENTER ☐ FOSTER FAMILY HOME ☐ FAMILY FRIEND ☐ GROUP HOME OR INSTITUTION ☐ RELATIVE'S HOME		TYPE OF ABUSE (CHECK ONE OR MORE) ☐ PHYSICAL ☐ MENTAL ☐ SEXUAL ☐ NEGLECT ☐ OTHER (SPECIFY)	
RELATIONSHIP TO SUSPECT	PHOTOS TAKEN? ☐ YES ☐ NO		DID THE INCIDENT RESULT IN THE VICTIM'S DEATH? ☐ YES ☐ NO ☐ UNK	

D. INVOLVED PARTIES

VICTIM'S SIBLINGS

NAME	BIRTHDATE	SEX	ETHNICITY	NAME	BIRTHDATE	SEX	ETHNICITY
1.				3.			
2.				4.			

VICTIM'S PARENTS/GUARDIANS

NAME (LAST, FIRST, MIDDLE)		BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
ADDRESS Street / City / Zip	HOME PHONE ( )	BUSINESS PHONE ( )		
NAME (LAST, FIRST, MIDDLE)		BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
ADDRESS Street / City / Zip	HOME PHONE ( )	BUSINESS PHONE ( )		

SUSPECT

SUSPECT'S NAME (LAST, FIRST, MIDDLE)		BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
ADDRESS Street / City / Zip		TELEPHONE ( )		
OTHER RELEVANT INFORMATION				

E. INCIDENT INFORMATION

IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX ☐ *IF MULTIPLE VICTIMS, INDICATE NUMBER:* _____

DATE / TIME OF INCIDENT	PLACE OF INCIDENT

NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) re-disclosed or past incidents involving the victim(s) or suspect)

SS 8572 (Rev. 12/02) *DEFINITIONS AND INSTRUCTIONS ON REVERSE*

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code Section 11169 to submit to DOJ a Child Abuse Investigation Report Form SS 8583 if (1) an active investigation was conducted and (2) the incident was determined not to be unfounded

WHITE COPY-Police or Sheriff's Department; BLUE COPY-County Welfare or Probation Department; GREEN COPY- District Attorney's Office; YELLOW COPY-Reporting Party

(front)

Suspected Child Abuse Report
DOJ SS 8572

DEFINITIONS AND GENERAL INSTRUCTIONS FOR COMPLETION OF FORM SS 8572

All Penal Code (PC) references are located in Article 2.5 of the PC. This article is known as the Child Abuse and Neglect Reporting Act (CANRA). The provisions of CANRA may be viewed at: http://www.leginfo.ca.gov/calaw.html (specify "Penal Code" and search for Sections 11164-11174.3). A mandated reporter must complete and submit the form SS 8572 even if some of the requested information is not known. (PC Section 11167(a).)

I. MANDATED CHILD ABUSE REPORTERS

- Mandated child abuse reporters include all those individuals and entities listed in PC Section 11165.7.

II. TO WHOM REPORTS ARE TO BE MADE ("DESIGNATED AGENCIES")

- Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department (not including a school district police or security department), the county probation department (if designated by the county to receive mandated reports), or the county welfare department. (PC Section 11165.9.)

III. REPORTING RESPONSIBILITIES

- Any mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall report such suspected incident of abuse or neglect to a designated agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof *within 36 hours* of receiving the information concerning the incident. (PC Section 11166(a).)
- No mandated reporter who reports a suspected incident of child abuse or neglect shall be held civilly or criminally liable for any report required or authorized by CANRA. Any other person reporting a known or suspected incident of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by CANRA unless it can be proven the report was false and the person knew it was false or made the report with reckless disregard of its truth or falsity. (PC Section 11172(a).)

IV. INSTRUCTIONS

- **SECTION A - REPORTING PARTY:** Enter the mandated reporter's name, title, category (from PC Section 11165.7), business/agency name and address, daytime telephone number, and today's date. Check yes-no whether the mandated reporter witnessed the incident. The signature area is for either the mandated reporter or, if the report is telephoned in by the mandated reporter, the person taking the telephoned report.

IV. INSTRUCTIONS (Continued)

- **SECTION B - REPORT NOTIFICATION:** Complete the name and address of the designated agency notified, the date/time of the phone call, and the name, title, and telephone number of the official contacted.
- **SECTION C - VICTIM (One Report per Victim):** Enter the victim's name, address, telephone number, birth date or approximate age, sex, ethnicity, present location, and, where applicable, enter the school, class (indicate the teacher's name or room number), and grade. List the primary language spoken in the victim's home. Check the appropriate yes-no box to indicate whether the victim may have a developmental disability or physical disability and specify any other apparent disability. Check the appropriate yes-no box to indicate whether the victim is in foster care, and check the appropriate box to indicate the type of care if the victim was in out-of-home care. Check the appropriate box to indicate the type of abuse. List the victim's relationship to the suspect. Check the appropriate yes-no box to indicate whether photos of the injuries were taken. Check the appropriate box to indicate whether the incident resulted in the victim's death.
- **SECTION D - INVOLVED PARTIES:** Enter the requested information for: Victim's Siblings, Victim's Parents/Guardians, and Suspect. Attach extra sheet(s) if needed (provide the requested information for each individual on the attached sheet(s)).
- **SECTION E - INCIDENT INFORMATION:** If multiple victims, indicate the number and submit a form for each victim. Enter date/time and place of the incident. Provide a narrative of the incident. Attach extra sheet(s) if needed.

V. DISTRIBUTION

- **Reporting Party:** After completing Form SS 8572, retain the yellow copy for your records and submit the top three copies to the designated agency.
- **Designated Agency:** *Within 36 hours* of receipt of Form SS 8572, send white copy to police or sheriff's department, blue copy to county welfare or probation department, and green copy to district attorney's office.

ETHNICITY CODES

1 Alaskan Native	6 Caribbean	11 Guamanian	16 Korean	22 Polynesian	27 White-Armenian
2 American Indian	7 Central American	12 Hawaiian	17 Laotian	23 Samoan	28 White-Central American
3 Asian Indian	8 Chinese	13 Hispanic	18 Mexican	24 South American	29 White-European
4 Black	9 Ethiopian	14 Hmong	19 Other Asian	25 Vietnamese	30 White-Middle Eastern
5 Cambodian	10 Filipino	15 Japanese	21 Other Pacific Islander	26 White	31 White-Rumanian

(back)

Acknowledgments

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