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California

Immunity for Reporters of Child Abuse and Neglect

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Current Through March 2015

Citation: Penal Code § 11172(a), (b)

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. 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, images, or material 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.

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.

Citation: Penal Code § 11172(c), (d)(1)

Any commercial computer technician, and any employer of any commercial computer technician, who, pursuant to a warrant from a law enforcement agency investigating a report of suspected child abuse or neglect, provides the law enforcement agency with a computer or computer component that contains possible evidence of a known or suspected instance of child abuse or neglect, shall not incur civil or criminal liability as a result of providing that computer or computer component to the law enforcement agency.

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 California Victim Compensation and Government Claims Board 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 California Victim Compensation and Government Claims Board 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 \$50,000.

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Mandatory Reporters of Child Abuse and Neglect

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Professionals Required to Report

Citation: Penal Code § 11165.7

Mandated reporters include the following:

- Teachers, teacher's aides, administrators, and employees of public or private schools
- Administrators or employees of day camps, youth centers, or youth recreation programs
- Administrators or employees of licensed community care or child daycare facilities; Head Start program teachers
- Public assistance workers
- Foster parents, group home personnel, and personnel of residential care facilities
- Social workers, probation officers, and parole officers
- Employees of school district police or security departments
- District attorney investigators, inspectors, or local child support agency caseworkers
- Peace officers and firefighters, except for volunteer firefighters
- Physicians, surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, marriage and family therapists, or social workers
- State or county public health employees who treat minors for venereal diseases or other conditions
- Coroners and medical examiners
- Commercial film and photographic print or image processors; computer technicians
- Child visitation monitors
- Animal control or humane society officers
- Clergy members and custodians of records of clergy members
- Employees of police departments, county sheriff's departments, county probation departments, or county welfare departments
- Employees or volunteers of a court-appointed special advocate program
- Alcohol and drug counselors
- Employees or administrators of public or private postsecondary institutions
- Athletic coaches, athletic administrators, or athletic directors employed by any public or private schools
- Athletic coaches, including, but not limited to, assistant coaches or graduate assistants involved in coaching at public or private postsecondary institutions

Reporting by Other Persons

Citation: Penal Code §§ 11165.7; 11166

Volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect.

Any other person who reasonably suspects that a child is a victim of abuse or neglect may report.

For the purposes of this section, 'any other person' includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

Institutional Responsibility to Report

Citation: Penal Code § 11166(h)-(i)

When two or more persons, who are required to report have joint 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 who was originally designated to report has failed to do so shall thereafter make the report.

The reporting duties under this section are individual; 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 to disclose his or her identity to the employer.

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 § 11165.9.

Standards for Making a Report

Citation: Penal Code §§ 11166; 11165.7

A report is required when:

- 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 reporter knows or reasonably suspects is the victim of abuse or neglect.
- Commercial film and photographic print processors have knowledge of or observe any film, photograph, videotape, negative, or slide depicting a child under age 16 engaged in an act of sexual conduct.
- Commercial computer technicians have knowledge of or observe, within the scope of their professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, software, file, floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under age 16 engaged in an act of sexual conduct.

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

Privileged Communications

Citation: Penal Code § 11166

The clergy-penitent privilege is permitted for penitential communications. This does not 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.

Inclusion of Reporter's Name in Report

Citation: Penal Code § 11167

Reports of mandated reporters shall include:

- The name, business address, and telephone number of the mandated reporter
- The capacity that makes the person a mandated reporter

Reports of other persons do not require the reporter's name.

Disclosure of Reporter Identity**Citation: Penal Code § 11167**

The identity of the reporter shall be confidential and disclosed only:

- Among agencies receiving or investigating mandated reports
- To the prosecutor in a criminal prosecution or in an action initiated under § 602 of the Welfare and Institutions Code arising from alleged child abuse
- To counsel appointed pursuant to § 317(c) of the Welfare and Institutions Code
- To the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or § 300 of the Welfare and Institutions Code
- To a licensing agency when abuse or neglect in out-of-home care is reasonably suspected
- When the reporter waives confidentiality
- By court order

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Penalties for Failure to Report and False Reporting of Child Abuse and Neglect

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Current Through August 2015

Failure to Report**Citation: Penal Code §§ 11166(c); 11166.01**

Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor punishable by up to 6 months in a county jail or by a fine of \$1,000, or both. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until an agency specified in § 11165.9 discovers the offense.

Any supervisor or administrator who violates § 11166(1) [that prohibits impeding others from making a report], shall be punished by not more than 6 months in a county jail or by a fine of not more than \$1,000, or both.

Any mandated reporter who willfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect, where that abuse or neglect results in death or great bodily injury, shall be punished by not more than 1 year in a county jail or by a fine of not more than \$5,000, or both.

False Reporting**Citation: Penal Code § 11172(a)**

Any 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, 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.

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.

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