

AMENDED IN ASSEMBLY FEBRUARY 25, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 20**

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**Introduced by Assembly Member Waldron**

December 3, 2012

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An act to amend Sections 311.1, 311.2, 311.3, 311.11, Section 1203.4 of, 11165.7, and 11166 of and to add Section 311.12 to, the Penal Code, relating to obscene matter.

LEGISLATIVE COUNSEL'S DIGEST

AB 20, as amended, Waldron. Obscene matter: minors.

~~Existing law provides that every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, as specified, with the intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined, shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed \$1,000, or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not to exceed \$10,000, or by both the fine and imprisonment.~~

~~This bill would provide that the punishment for this offense would be imprisonment in the state prison, a fine not to exceed \$10,000, or by both the fine and imprisonment.~~

~~Existing law provides that every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for~~

~~sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, as specified, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding \$2,000, or by both that fine and imprisonment, or by imprisonment in the state prison.~~

~~This bill would provide that the punishment for this offense would be imprisonment in the state prison.~~

~~Existing law provides that a person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, as specified, that depicts a person under 18 years of age engaged in an act of sexual conduct. Existing law provides that every person who commits that offense shall be punished by a fine of not more than \$2,000 or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment, or, if the person has been previously convicted of that offense or other specified offenses relating to obscene matter that he or she shall be punished by imprisonment in the state prison.~~

~~This bill would provide that the punishment for this offense would be imprisonment in the state prison.~~

~~Existing law, amended by Proposition 83, as approved by the voters at the November 7, 2006, statewide general election, provides that every person who knowingly possesses or controls any matter, 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, as specified, that depicts a person under 18 years of age personally engaging in or simulating sexual conduct, as provided, is guilty of a felony and shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding \$2,500, or by both the fine and imprisonment. The Legislature may amend the provisions of Proposition 83 by a~~

majority vote if the amendments increase the penalties for an offense within the scope of the proposition.

~~This bill would provide that punishment for this offense would be imprisonment in the state prison.~~

*Existing law generally prohibits the production, distribution, and production of any representation of information, data, or image, as specified, of any obscene matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined. Violations of these provisions are crimes.*

*This bill would provide that every person who is convicted of a violation of specified offenses relating to obscene matter involving minors, as specified, in which the violation is committed on, or via, a government-owned computer or via a government-owned computer network, or in which the production, transportation, or distribution of which involves the use, possession, or control of government-owned property shall, in addition to any imprisonment or fine imposed for the commission of the underlying offense, be punished by a fine not exceeding \$2,000, unless the court determines that the defendant does not have the ability to pay. The bill would provide that revenue from any fines collected would be transferred for deposit into a county fund established for that purpose and allocated for sexual assault investigator training, high technology crime task forces, public agencies and nonprofit corporations that provide shelter, counseling, or other direct services for victims of human trafficking, and multidisciplinary teams involved in the prosecution of child abuse cases, as specified.*

Existing law allows for the release from all penalties and disabilities resulting from an offense for which the person was convicted if specified criteria are met. Existing law excludes certain sex offenses from these provisions.

This bill would additionally exclude specified offenses relating to obscene matter involving minors from these provisions.

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

knowledge of or observed in his or her professional capacity or employment any film, photograph, videotape, negative, or slide depicting a child under 16 years of age engaging in an act of sexual conduct to report the instance of suspected child abuse to a law enforcement agency, as specified.

This bill would apply these provisions to a librarian, as provided.

By increasing the penalties for existing crimes and imposing the mandated reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: *yes-no*.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 311.1 of the Penal Code is amended to  
 2 read:  
 3 311.1. (a) Every person who knowingly sends or causes to be  
 4 sent, or brings or causes to be brought, into this state for sale or  
 5 distribution, or in this state possesses, prepares, publishes,  
 6 produces, develops, duplicates, or prints any representation of  
 7 information, data, or image, including, but not limited to, any film,  
 8 filmstrip, photograph, negative, slide, photocopy, videotape, video  
 9 laser disc, computer hardware, computer software, computer floppy  
 10 disc, data storage media, CD-ROM, or computer-generated  
 11 equipment or any other computer-generated image that contains  
 12 or incorporates in any manner, any film or filmstrip, with intent  
 13 to distribute or to exhibit to, or to exchange with, others, or who  
 14 offers to distribute, distributes, or exhibits to, or exchanges with,  
 15 others, any obscene matter, knowing that the matter depicts a  
 16 person under the age of 18 years personally engaging in or  
 17 personally simulating sexual conduct, as defined in Section 311.4,  
 18 shall be punished by imprisonment in the state prison, by a fine  
 19 not to exceed ten thousand dollars (\$10,000), or by the fine and  
 20 imprisonment.

1 ~~(b) This section does not apply to the activities of law~~  
2 ~~enforcement and prosecuting agencies in the investigation and~~  
3 ~~prosecution of criminal offenses or to legitimate medical, scientific,~~  
4 ~~or educational activities, or to lawful conduct between spouses.~~

5 ~~(c) This section does not apply to matter which depicts a child~~  
6 ~~under the age of 18, which child is legally emancipated, including~~  
7 ~~lawful conduct between spouses when one or both are under the~~  
8 ~~age of 18.~~

9 ~~(d) It does not constitute a violation of this section for a~~  
10 ~~telephone corporation, as defined by Section 234 of the Public~~  
11 ~~Utilities Code, to carry or transmit messages described in this~~  
12 ~~chapter or perform related activities in providing telephone~~  
13 ~~services.~~

14 ~~SEC. 2. Section 311.2 of the Penal Code is amended to read:~~

15 ~~311.2. (a) Every person who knowingly sends or causes to be~~  
16 ~~sent, or brings or causes to be brought, into this state for sale or~~  
17 ~~distribution, or in this state possesses, prepares, publishes,~~  
18 ~~produces, or prints, with intent to distribute or to exhibit to others,~~  
19 ~~or who offers to distribute, distributes, or exhibits to others, any~~  
20 ~~obscene matter is for a first offense, guilty of a misdemeanor. If~~  
21 ~~the person has previously been convicted of any violation of this~~  
22 ~~section, the court may, in addition to the punishment authorized~~  
23 ~~in Section 311.9, impose a fine not exceeding fifty thousand dollars~~  
24 ~~(\$50,000).~~

25 ~~(b) Every person who knowingly sends or causes to be sent, or~~  
26 ~~brings or causes to be brought, into this state for sale or distribution,~~  
27 ~~or in this state possesses, prepares, publishes, produces, develops,~~  
28 ~~duplicates, or prints any representation of information, data, or~~  
29 ~~image, including, but not limited to, any film, filmstrip, photograph,~~  
30 ~~negative, slide, photocopy, videotape, video laser disc, computer~~  
31 ~~hardware, computer software, computer floppy disc, data storage~~  
32 ~~media, CD-ROM, or computer-generated equipment or any other~~  
33 ~~computer-generated image that contains or incorporates in any~~  
34 ~~manner, any film or filmstrip, with intent to distribute or to exhibit~~  
35 ~~to, or to exchange with, others for commercial consideration, or~~  
36 ~~who offers to distribute, distributes, or exhibits to, or exchanges~~  
37 ~~with, others for commercial consideration, any obscene matter,~~  
38 ~~knowing that the matter depicts a person under the age of 18 years~~  
39 ~~personally engaging in or personally simulating sexual conduct,~~  
40 ~~as defined in Section 311.4, is guilty of a felony and shall be~~

1 punished by imprisonment in the state prison for two, three, or six  
2 years, or by a fine not exceeding one hundred thousand dollars  
3 (\$100,000), in the absence of a finding that the defendant would  
4 be incapable of paying that fine, or by both that fine and  
5 imprisonment.

6 ~~(e) Every person who knowingly sends or causes to be sent, or  
7 brings or causes to be brought, into this state for sale or distribution,  
8 or in this state possesses, prepares, publishes, produces, develops,  
9 duplicates, or prints any representation of information, data, or  
10 image, including, but not limited to, any film, filmstrip, photograph,  
11 negative, slide, photocopy, videotape, video laser disc, computer  
12 hardware, computer software, computer floppy disc, data storage  
13 media, CD-ROM, or computer-generated equipment or any other  
14 computer-generated image that contains or incorporates in any  
15 manner, any film or filmstrip, with intent to distribute or exhibit  
16 to, or to exchange with, a person 18 years of age or older, or who  
17 offers to distribute, distributes, or exhibits to, or exchanges with,  
18 a person 18 years of age or older any matter, knowing that the  
19 matter depicts a person under the age of 18 years personally  
20 engaging in or personally simulating sexual conduct, as defined  
21 in Section 311.4, shall be punished by imprisonment in the state  
22 prison. It is not necessary to prove commercial consideration or  
23 that the matter is obscene in order to establish a violation of this  
24 subdivision.~~

25 ~~(d) Every person who knowingly sends or causes to be sent, or  
26 brings or causes to be brought, into this state for sale or distribution,  
27 or in this state possesses, prepares, publishes, produces, develops,  
28 duplicates, or prints any representation of information, data, or  
29 image, including, but not limited to, any film, filmstrip, photograph,  
30 negative, slide, photocopy, videotape, video laser disc, computer  
31 hardware, computer software, computer floppy disc, data storage  
32 media, CD-ROM, or computer-generated equipment or any other  
33 computer-generated image that contains or incorporates in any  
34 manner, any film or filmstrip, with intent to distribute or exhibit  
35 to, or to exchange with, a person under 18 years of age, or who  
36 offers to distribute, distributes, or exhibits to, or exchanges with,  
37 a person under 18 years of age any matter, knowing that the matter  
38 depicts a person under the age of 18 years personally engaging in  
39 or personally simulating sexual conduct, as defined in Section  
40 311.4, is guilty of a felony. It is not necessary to prove commercial~~

1 consideration or that the matter is obscene in order to establish a  
2 violation of this subdivision.

3 ~~(e) Subdivisions (a) to (d), inclusive, do not apply to the~~  
4 ~~activities of law enforcement and prosecuting agencies in the~~  
5 ~~investigation and prosecution of criminal offenses, to legitimate~~  
6 ~~medical, scientific, or educational activities, or to lawful conduct~~  
7 ~~between spouses.~~

8 ~~(f) This section does not apply to matter that depicts a legally~~  
9 ~~emancipated child under the age of 18 years or to lawful conduct~~  
10 ~~between spouses when one or both are under the age of 18 years.~~

11 ~~(g) It does not constitute a violation of this section for a~~  
12 ~~telephone corporation, as defined by Section 234 of the Public~~  
13 ~~Utilities Code, to carry or transmit messages described in this~~  
14 ~~chapter or to perform related activities in providing telephone~~  
15 ~~services.~~

16 ~~SEC. 3. Section 311.3 of the Penal Code is amended to read:~~

17 ~~311.3. (a) A person is guilty of sexual exploitation of a child~~  
18 ~~if he or she knowingly develops, duplicates, prints, or exchanges~~  
19 ~~any representation of information, data, or image, including, but~~  
20 ~~not limited to, any film, filmstrip, photograph, negative, slide,~~  
21 ~~photocopy, videotape, video laser disc, computer hardware,~~  
22 ~~computer software, computer floppy disc, data storage media,~~  
23 ~~CD-ROM, or computer-generated equipment or any other~~  
24 ~~computer-generated image that contains or incorporates in any~~  
25 ~~manner, any film or filmstrip that depicts a person under the age~~  
26 ~~of 18 years engaged in an act of sexual conduct.~~

27 ~~(b) As used in this section, "sexual conduct" means any of the~~  
28 ~~following:~~

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

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

33 ~~(3) Masturbation for the purpose of sexual stimulation of the~~  
34 ~~viewer.~~

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

37 ~~(5) Exhibition of the genitals or the pubic or rectal area of any~~  
38 ~~person for the purpose of sexual stimulation of the viewer.~~

39 ~~(6) Defecation or urination for the purpose of sexual stimulation~~  
40 ~~of the viewer.~~

1 ~~(e) Subdivision (a) does not apply to the activities of law~~  
2 ~~enforcement and prosecution agencies in the investigation and~~  
3 ~~prosecution of criminal offenses or to legitimate medical, scientific,~~  
4 ~~or educational activities, or to lawful conduct between spouses.~~

5 ~~(d) Every person who violates subdivision (a) shall be punished~~  
6 ~~by imprisonment in the state prison.~~

7 ~~(e) The provisions of this section do not apply to an employee~~  
8 ~~of a commercial film developer who is acting within the scope of~~  
9 ~~his or her employment and in accordance with the instructions of~~  
10 ~~his or her employer, provided that the employee has no financial~~  
11 ~~interest in the commercial developer by which he or she is~~  
12 ~~employed.~~

13 ~~(f) Subdivision (a) does not apply to matter that is unsolicited~~  
14 ~~and is received without knowledge or consent through a facility,~~  
15 ~~system, or network over which the person or entity has no control.~~

16 ~~SEC. 4. Section 311.11 of the Penal Code is amended to read:~~

17 ~~311.11. (a) Every person who knowingly possesses or controls~~  
18 ~~any matter, representation of information, data, or image, including,~~  
19 ~~but not limited to, any film, filmstrip, photograph, negative, slide,~~  
20 ~~photocopy, videotape, video laser disc, computer hardware,~~  
21 ~~computer software, computer floppy disc, data storage media,~~  
22 ~~CD-ROM, or computer-generated equipment or any other~~  
23 ~~computer-generated image that contains or incorporates in any~~  
24 ~~manner, any film or filmstrip, the production of which involves~~  
25 ~~the use of a person under the age of 18 years, knowing that the~~  
26 ~~matter depicts a person under the age of 18 years personally~~  
27 ~~engaging in or simulating sexual conduct, as defined in subdivision~~  
28 ~~(d) of Section 311.4, is guilty of a felony and shall be punished by~~  
29 ~~imprisonment in the state prison.~~

30 ~~(b) Every person who commits a violation of subdivision (a),~~  
31 ~~and who has been previously convicted of a violation of this~~  
32 ~~section, an offense requiring registration under the Sex Offender~~  
33 ~~Registration Act, or an attempt to commit any of the~~  
34 ~~above-mentioned offenses, is guilty of a felony and shall be~~  
35 ~~punished by imprisonment in the state prison for two, four, or six~~  
36 ~~years.~~

37 ~~(c) It is not necessary to prove that the matter is obscene in order~~  
38 ~~to establish a violation of this section.~~

39 ~~(d) This section does not apply to drawings, figurines, statues,~~  
40 ~~or any film rated by the Motion Picture Association of America,~~



1 ~~nor does it apply to live or recorded telephone messages when~~  
2 ~~transmitted, disseminated, or distributed as part of a commercial~~  
3 ~~transaction.~~

4 *SECTION 1. Section 311.12 is added to the Penal Code, to*  
5 *read:*

6 *311.12. (a) (1) Every person who is convicted of a violation*  
7 *of Section 311.1, 311.2, 311.3, 311.10, or 311.11 in which the*  
8 *offense involves the production, use, possession, control, or*  
9 *advertising of matter or image that depicts a person under 18 years*  
10 *of age personally engaging in or simulating sexual conduct, as*  
11 *defined in subdivision (d) of Section 311.4, in which the violation*  
12 *is committed on, or via, a government-owned computer or via a*  
13 *government-owned computer network, shall, in addition to any*  
14 *imprisonment or fine imposed for the commission of the underlying*  
15 *offense, be punished by a fine not exceeding two thousand dollars*  
16 *(\$2,000), unless the court determines that the defendant does not*  
17 *have the ability to pay.*

18 *(2) Every person who is convicted of a violation of Section*  
19 *311.1, 311.2, 311.3, 311.10, or 311.11 in which the offense involves*  
20 *the production, use, possession, control, or advertising of matter*  
21 *or image that depicts a person under 18 years of age personally*  
22 *engaging in or simulating sexual conduct, as defined in subdivision*  
23 *(d) of Section 311.4, in which the production, transportation, or*  
24 *distribution of which involves the use, possession or control of*  
25 *government-owned property shall, in addition to any imprisonment*  
26 *or fine imposed for the commission of the underlying offense, be*  
27 *punished by a fine not exceeding two thousand dollars (\$2,000),*  
28 *unless the court determines that the defendant does not have the*  
29 *ability to pay.*

30 *(b) The fines in subdivision (a) shall not be subject to the*  
31 *provisions of Sections 76000 and 76000.5 of the Government Code,*  
32 *or Sections 1464 and 1465.7 of this code.*

33 *(c) Revenue from any fines collected pursuant to this section*  
34 *shall be deposited into a county fund established for that purpose*  
35 *and allocated as follows, and a county may transfer all or part of*  
36 *any of those allocations to another county for the allocated use:*

37 *(1) Twenty-five percent for sexual assault investigator training.*

38 *(2) Twenty-five percent for high technology crime task forces.*

1 (3) *Twenty-five percent for public agencies and nonprofit*  
2 *corporations that provide shelter, counseling, or other direct*  
3 *services for victims of human trafficking.*

4 (4) *Twenty-five percent for multidisciplinary teams.*

5 (d) *As used in this section:*

6 (1) *“Computer” includes any computer hardware, computer*  
7 *software, computer floppy disk, data storage medium, or CD-ROM.*

8 (2) *“Government-owned” includes property and networks owned*  
9 *or operated by state government, city government, city and county*  
10 *government, county government, a public library, or a public*  
11 *college or university.*

12 (3) *“Multidisciplinary teams” means a child-focused,*  
13 *facility-based program in which representatives from many*  
14 *disciplines, including law enforcement, child protection,*  
15 *prosecution, medical and mental health, and victim and child*  
16 *advocacy work together to conduct interviews and make team*  
17 *decisions about the investigation, treatment, management, and*  
18 *prosecution of child abuse cases, including child sexual abuse*  
19 *cases. It is the intent of the Legislature that this multidisciplinary*  
20 *team approach will protect victims of child abuse from multiple*  
21 *interviews, result in a more complete understanding of case issues,*  
22 *and provide the most effective child and family focused system*  
23 *response possible.*

24 (e) *Nothing in this section shall be construed to require any*  
25 *government or government entity to retain data in violation of any*  
26 *provision of state or federal law.*

27 ~~SEC. 5.~~

28 SEC. 2. Section 1203.4 of the Penal Code is amended to read:

29 1203.4. (a) (1) In any case in which a defendant has fulfilled  
30 the conditions of probation for the entire period of probation, or  
31 has been discharged prior to the termination of the period of  
32 probation, or in any other case in which a court, in its discretion  
33 and the interests of justice, determines that a defendant should be  
34 granted the relief available under this section, the defendant shall,  
35 at any time after the termination of the period of probation, if he  
36 or she is not then serving a sentence for any offense, on probation  
37 for any offense, or charged with the commission of any offense,  
38 be permitted by the court to withdraw his or her plea of guilty or  
39 plea of nolo contendere and enter a plea of not guilty; or, if he or  
40 she has been convicted after a plea of not guilty, the court shall

1 set aside the verdict of guilty; and, in either case, the court shall  
2 thereupon dismiss the accusations or information against the  
3 defendant and except as noted below, he or she shall thereafter be  
4 released from all penalties and disabilities resulting from the  
5 offense of which he or she has been convicted, except as provided  
6 in Section 13555 of the Vehicle Code. The probationer shall be  
7 informed, in his or her probation papers, of this right and privilege  
8 and his or her right, if any, to petition for a certificate of  
9 rehabilitation and pardon. The probationer may make the  
10 application and change of plea in person or by attorney, or by the  
11 probation officer authorized in writing. However, in any subsequent  
12 prosecution of the defendant for any other offense, the prior  
13 conviction may be pleaded and proved and shall have the same  
14 effect as if probation had not been granted or the accusation or  
15 information dismissed. The order shall state, and the probationer  
16 shall be informed, that the order does not relieve him or her of the  
17 obligation to disclose the conviction in response to any direct  
18 question contained in any questionnaire or application for public  
19 office, for licensure by any state or local agency, or for contracting  
20 with the California State Lottery Commission.

21 (2) Dismissal of an accusation or information pursuant to this  
22 section does not permit a person to own, possess, or have in his or  
23 her custody or control any firearm or prevent his or her conviction  
24 under Chapter 2 (commencing with Section 29800) of Division 9  
25 of Title 4 of Part 6.

26 (3) Dismissal of an accusation or information underlying a  
27 conviction pursuant to this section does not permit a person  
28 prohibited from holding public office as a result of that conviction  
29 to hold public office.

30 (4) This subdivision shall apply to all applications for relief  
31 under this section which are filed on or after November 23, 1970.

32 (b) Subdivision (a) of this section does not apply to any  
33 misdemeanor that is within the provisions of Section 42002.1 of  
34 the Vehicle Code, to any violation of subdivision (c) of Section  
35 286, Section 288, subdivision (c) of Section 288a, Section 288.5,  
36 subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or  
37 311.11, or any felony conviction pursuant to subdivision (d) of  
38 Section 261.5, or to any infraction.

39 (c) (1) Except as provided in paragraph (2), subdivision (a)  
40 does not apply to a person who receives a notice to appear or is

1 otherwise charged with a violation of an offense described in  
2 subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle  
3 Code.

4 (2) If a defendant who was convicted of a violation listed in  
5 paragraph (1) petitions the court, the court in its discretion and in  
6 the interests of justice, may order the relief provided pursuant to  
7 subdivision (a) to that defendant.

8 (d) A person who petitions for a change of plea or setting aside  
9 of a verdict under this section may be required to reimburse the  
10 court for the actual costs of services rendered, whether or not the  
11 petition is granted and the records are sealed or expunged, at a rate  
12 to be determined by the court not to exceed one hundred fifty  
13 dollars (\$150), and to reimburse the county for the actual costs of  
14 services rendered, whether or not the petition is granted and the  
15 records are sealed or expunged, at a rate to be determined by the  
16 county board of supervisors not to exceed one hundred fifty dollars  
17 (\$150), and to reimburse any city for the actual costs of services  
18 rendered, whether or not the petition is granted and the records are  
19 sealed or expunged, at a rate to be determined by the city council  
20 not to exceed one hundred fifty dollars (\$150). Ability to make  
21 this reimbursement shall be determined by the court using the  
22 standards set forth in paragraph (2) of subdivision (g) of Section  
23 987.8 and shall not be a prerequisite to a person's eligibility under  
24 this section. The court may order reimbursement in any case in  
25 which the petitioner appears to have the ability to pay, without  
26 undue hardship, all or any portion of the costs for services  
27 established pursuant to this subdivision.

28 (e) (1) Relief shall not be granted under this section unless the  
29 prosecuting attorney has been given 15 days' notice of the petition  
30 for relief. The probation officer shall notify the prosecuting attorney  
31 when a petition is filed, pursuant to this section.

32 (2) It shall be presumed that the prosecuting attorney has  
33 received notice if proof of service is filed with the court.

34 (f) If, after receiving notice pursuant to subdivision (e), the  
35 prosecuting attorney fails to appear and object to a petition for  
36 dismissal, the prosecuting attorney may not move to set aside or  
37 otherwise appeal the grant of that petition.

38 (g) Notwithstanding the above provisions or any other provision  
39 of law, the Governor shall have the right to pardon a person  
40 convicted of a violation of subdivision (c) of Section 286, Section

1 288, subdivision (c) of Section 288a, Section 288.5, or subdivision  
2 (j) of Section 289, if there are extraordinary circumstances.

3 ~~SEC. 6. Section 11165.7 of the Penal Code, as amended by~~  
4 ~~Section 1.15 of Chapter 521 of the Statutes of 2012, is amended~~  
5 ~~to read:~~

6 ~~11165.7. (a) As used in this article, “mandated reporter” is~~  
7 ~~defined as any of the following:~~

8 ~~(1) A teacher.~~

9 ~~(2) An instructional aide.~~

10 ~~(3) A teacher’s aide or teacher’s assistant employed by a public~~  
11 ~~or private school.~~

12 ~~(4) A classified employee of a public school.~~

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

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

17 ~~(7) An administrator or employee of a public or private youth~~  
18 ~~center, youth recreation program, or youth organization.~~

19 ~~(8) An administrator or employee of a public or private~~  
20 ~~organization whose duties require direct contact and supervision~~  
21 ~~of children.~~

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

25 ~~(10) A licensee, an administrator, or an employee of a licensed~~  
26 ~~community care or child day care facility.~~

27 ~~(11) A Head Start program teacher.~~

28 ~~(12) A licensing worker or licensing evaluator employed by a~~  
29 ~~licensing agency, as defined in Section 11165.11.~~

30 ~~(13) A public assistance worker.~~

31 ~~(14) An employee of a child care institution, including, but not~~  
32 ~~limited to, foster parents, group home personnel, and personnel of~~  
33 ~~residential care facilities.~~

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

35 ~~(16) An employee of a school district police or security~~  
36 ~~department.~~

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

- 1     ~~(18) A district attorney investigator, inspector, or local child~~  
2 ~~support agency caseworker, unless the investigator, inspector, or~~  
3 ~~caseworker is working with an attorney appointed pursuant to~~  
4 ~~Section 317 of the Welfare and Institutions Code to represent a~~  
5 ~~minor.~~
- 6     ~~(19) A peace officer, as defined in Chapter 4.5 (commencing~~  
7 ~~with Section 830) of Title 3 of Part 2, who is not otherwise~~  
8 ~~described in this section.~~
- 9     ~~(20) A firefighter, except for volunteer firefighters.~~
- 10    ~~(21) A physician and surgeon, psychiatrist, psychologist, dentist,~~  
11 ~~resident, intern, podiatrist, chiropractor, licensed nurse, dental~~  
12 ~~hygienist, optometrist, marriage and family therapist, clinical social~~  
13 ~~worker, professional clinical counselor, or any other person who~~  
14 ~~is currently licensed under Division 2 (commencing with Section~~  
15 ~~500) of the Business and Professions Code.~~
- 16    ~~(22) An emergency medical technician I or II, paramedic, or~~  
17 ~~other person certified pursuant to Division 2.5 (commencing with~~  
18 ~~Section 1797) of the Health and Safety Code.~~
- 19    ~~(23) A psychological assistant registered pursuant to Section~~  
20 ~~2913 of the Business and Professions Code.~~
- 21    ~~(24) A marriage and family therapist trainee, as defined in~~  
22 ~~subdivision (c) of Section 4980.03 of the Business and Professions~~  
23 ~~Code.~~
- 24    ~~(25) An unlicensed marriage and family therapist intern~~  
25 ~~registered under Section 4980.44 of the Business and Professions~~  
26 ~~Code.~~
- 27    ~~(26) A state or county public health employee who treats a minor~~  
28 ~~for venereal disease or any other condition.~~
- 29    ~~(27) A coroner.~~
- 30    ~~(28) A medical examiner or other person who performs~~  
31 ~~autopsies.~~
- 32    ~~(29) A commercial film and photographic print or image~~  
33 ~~processor as specified in subdivision (c) of Section 11166. As used~~  
34 ~~in this article, "commercial film and photographic print or image~~  
35 ~~processor" means a person who develops exposed photographic~~  
36 ~~film into negatives, slides, or prints, or who makes prints from~~  
37 ~~negatives or slides, or who prepares, publishes, produces, develops,~~  
38 ~~duplicates, or prints any representation of information, data, or an~~  
39 ~~image, including, but not limited to, any film, filmstrip, photograph,~~  
40 ~~negative, slide, photocopy, videotape, video laser disk, computer~~

1 hardware, computer software, computer floppy disk, data storage  
2 medium, CD-ROM, computer-generated equipment, or  
3 computer-generated image, for compensation. The term includes  
4 any employee of that person; it does not include a person who  
5 develops film or makes prints or images for a public agency.

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

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

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

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

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

25 ~~(33) Any custodian of records of a clergy member, as specified~~  
26 ~~in this section and subdivision (d) of Section 11166.~~

27 ~~(34) An employee of any police department, county sheriff’s~~  
28 ~~department, county probation department, or county welfare~~  
29 ~~department.~~

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

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

34 ~~(37) A person providing services to a minor child under Section~~  
35 ~~12300 or 12300.1 of the Welfare and Institutions Code.~~

36 ~~(38) An alcohol and drug counselor. As used in this article, an~~  
37 ~~“alcohol and drug counselor” is a person providing counseling,~~  
38 ~~therapy, or other clinical services for a state licensed or certified~~  
39 ~~drug, alcohol, or drug and alcohol treatment program. However,~~

1 alcohol or drug abuse, or both alcohol and drug abuse, is not, in  
2 and of itself, a sufficient basis for reporting child abuse or neglect.

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

5 ~~(40) A clinical counselor intern registered under Section 4999.42~~  
6 ~~of the Business and Professions Code.~~

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

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

21 ~~(43) (A) A commercial computer technician as specified in~~  
22 ~~subdivision (e) of Section 11166. As used in this article,~~  
23 ~~“commercial computer technician” means a person who works for~~  
24 ~~a company that is in the business of repairing, installing, or~~  
25 ~~otherwise servicing a computer or computer component, including,~~  
26 ~~but not limited to, a computer part, device, memory storage or~~  
27 ~~recording mechanism, auxiliary storage recording or memory~~  
28 ~~capacity, or any other material relating to the operation and~~  
29 ~~maintenance of a computer or computer network system, for a fee.~~  
30 ~~An employer who provides an electronic communications service~~  
31 ~~or a remote computing service to the public shall be deemed to~~  
32 ~~comply with this article if that employer complies with Section~~  
33 ~~2258A of Title 18 of the United States Code.~~

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



1 ~~be a commercial computer technician for purposes of this article.~~  
2 ~~A commercial computer technician who makes a report to the~~  
3 ~~designated employee pursuant to this subparagraph shall be deemed~~  
4 ~~to have complied with the requirements of this article and shall be~~  
5 ~~subject to the protections afforded to mandated reporters, including,~~  
6 ~~but not limited to, those protections afforded by Section 11172.~~

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

10 ~~(45) A librarian, as specified in subdivision (e) of Section 11166.~~

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

18 ~~(e) Employers are strongly encouraged to provide their~~  
19 ~~employees who are mandated reporters with training in the duties~~  
20 ~~imposed by this article. This training shall include training in child~~  
21 ~~abuse and neglect identification and training in child abuse and~~  
22 ~~neglect reporting. Whether or not employers provide their~~  
23 ~~employees with training in child abuse and neglect identification~~  
24 ~~and reporting, the employers shall provide their employees who~~  
25 ~~are mandated reporters with the statement required pursuant to~~  
26 ~~subdivision (a) of Section 11166.5.~~

27 ~~(d) School districts that do not train their employees specified~~  
28 ~~in subdivision (a) in the duties of mandated reporters under the~~  
29 ~~child abuse reporting laws shall report to the State Department of~~  
30 ~~Education the reasons why this training is not provided.~~

31 ~~(e) Unless otherwise specifically provided, the absence of~~  
32 ~~training shall not excuse a mandated reporter from the duties~~  
33 ~~imposed by this article.~~

34 ~~(f) Public and private organizations are encouraged to provide~~  
35 ~~their volunteers whose duties require direct contact with and~~  
36 ~~supervision of children with training in the identification and~~  
37 ~~reporting of child abuse and neglect.~~

38 ~~SEC. 7. Section 11166 of the Penal Code, as amended by~~  
39 ~~Section 2.5 of Chapter 521 of the Statutes of 2012, is amended to~~  
40 ~~read:~~

1     ~~11166. — (a) Except as provided in subdivision (d), and in~~  
2     ~~Section 11166.05, a mandated reporter shall make a report to an~~  
3     ~~agency specified in Section 11165.9 whenever the mandated~~  
4     ~~reporter, in his or her professional capacity or within the scope of~~  
5     ~~his or her employment, has knowledge of or observes a child whom~~  
6     ~~the mandated reporter knows or reasonably suspects has been the~~  
7     ~~victim of child abuse or neglect. The mandated reporter shall make~~  
8     ~~an initial report by telephone to the agency immediately or as soon~~  
9     ~~as is practicably possible, and shall prepare and send, fax, or~~  
10    ~~electronically transmit a written followup report within 36 hours~~  
11    ~~of receiving the information concerning the incident. The mandated~~  
12    ~~reporter may include with the report any nonprivileged~~  
13    ~~documentary evidence the mandated reporter possesses relating~~  
14    ~~to the incident.~~

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

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

31    ~~(3) Any report made by a mandated reporter pursuant to this~~  
32    ~~section shall be known as a mandated report.~~

33    ~~(b) If after reasonable efforts a mandated reporter is unable to~~  
34    ~~submit an initial report by telephone, he or she shall immediately~~  
35    ~~or as soon as is practicably possible, by fax or electronic~~  
36    ~~transmission, make a one-time automated written report on the~~  
37    ~~form prescribed by the Department of Justice, and shall also be~~  
38    ~~available to respond to a telephone followup call by the agency~~  
39    ~~with which he or she filed the report. A mandated reporter who~~  
40    ~~files a one-time automated written report because he or she was~~

1 unable to submit an initial report by telephone is not required to  
2 submit a written followup report.

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

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

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

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

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

31 (e) ~~Any mandated reporter who fails to report an incident of  
32 known or reasonably suspected child abuse or neglect as required  
33 by this section is guilty of a misdemeanor punishable by up to six  
34 months confinement in a county jail or by a fine of one thousand  
35 dollars (\$1,000) or by both that imprisonment and fine. If a  
36 mandated reporter intentionally conceals his or her failure to report  
37 an incident known by the mandated reporter to be abuse or severe  
38 neglect under this section, the failure to report is a continuing  
39 offense until an agency specified in Section 11165.9 discovers the  
40 offense.~~

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

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

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

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

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

36 ~~(e) (1) Any commercial film, photographic print, or image~~  
37 ~~processor who has knowledge of or observes, within the scope of~~  
38 ~~his or her professional capacity or employment, any film,~~  
39 ~~photograph, videotape, negative, slide, or any representation of~~  
40 ~~information, data, or an image, including, but not limited to, any~~

1 film, filmstrip, photograph, negative, slide, photocopy, videotape,  
2 video laser disc, computer hardware, computer software, computer  
3 floppy disk, data storage medium, CD-ROM, computer-generated  
4 equipment, or computer-generated image depicting a child under  
5 16 years of age engaged in an act of sexual conduct, shall  
6 immediately, or as soon as practically possible, telephonically  
7 report the instance of suspected abuse to the law enforcement  
8 agency located in the county in which the images are seen. Within  
9 36 hours of receiving the information concerning the incident, the  
10 reporter shall prepare and send, fax, or electronically transmit a  
11 written followup report of the incident with a copy of the image  
12 or material attached.

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

30 (3) Any librarian who has knowledge of or observes, within the  
31 scope of his or her professional capacity or employment, any  
32 representation of information, data, or image, including, but not  
33 limited to, any computer hardware, computer software, computer  
34 file, computer floppy disk, data storage medium, CD-ROM,  
35 computer-generated equipment, or computer-generated image that  
36 is retrievable in perceivable form and that is intentionally saved,  
37 transmitted, or organized on an electronic medium, depicting a  
38 child under 16 years of age engaged in an act of sexual conduct,  
39 shall immediately, or as soon as practicably possible, telephonically  
40 report the instance of suspected abuse to the law enforcement

1 agency located in the county in which the images or materials are  
2 seen. As soon as practicably possible after receiving the  
3 information concerning the incident, the reporter shall prepare and  
4 send, fax, or electronically transmit a written followup report of  
5 the incident with a brief description of the images or materials.

6 ~~(4) For purposes of this article, “commercial computer~~  
7 ~~technician” includes an employee designated by an employer to~~  
8 ~~receive reports pursuant to an established reporting process~~  
9 ~~authorized by subparagraph (B) of paragraph (41) of subdivision~~  
10 ~~(a) of Section 11165.7.~~

11 ~~(5) As used in this subdivision, “electronic medium” includes,~~  
12 ~~but is not limited to, a recording, CD-ROM, magnetic disk memory,~~  
13 ~~magnetic tape memory, CD, DVD, thumbdrive, or any other~~  
14 ~~computer hardware or media.~~

15 ~~(6) As used in this subdivision, “sexual conduct” means any of~~  
16 ~~the following:~~

17 ~~(A) Sexual intercourse, including genital-genital, oral-genital,~~  
18 ~~anal-genital, or oral-anal, whether between persons of the same or~~  
19 ~~opposite sex or between humans and animals.~~

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

21 ~~(C) Masturbation for the purpose of sexual stimulation of the~~  
22 ~~viewer.~~

23 ~~(D) Sadomasochistic abuse for the purpose of sexual stimulation~~  
24 ~~of the viewer.~~

25 ~~(E) Exhibition of the genitals, pubic, or rectal areas of any~~  
26 ~~person for the purpose of sexual stimulation of the viewer.~~

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

33 ~~(g) Any other person who has knowledge of or observes a child~~  
34 ~~whom he or she knows or reasonably suspects has been a victim~~  
35 ~~of child abuse or neglect may report the known or suspected~~  
36 ~~instance of child abuse or neglect to an agency specified in Section~~  
37 ~~11165.9. For purposes of this section, “any other person” includes~~  
38 ~~a mandated reporter who acts in his or her private capacity and~~  
39 ~~not in his or her professional capacity or within the scope of his~~  
40 ~~or her employment.~~

1 ~~(h) When two or more persons, who are required to report,~~  
2 ~~jointly have knowledge of a known or suspected instance of child~~  
3 ~~abuse or neglect, and when there is agreement among them, the~~  
4 ~~telephone report may be made by a member of the team selected~~  
5 ~~by mutual agreement and a single report may be made and signed~~  
6 ~~by the selected member of the reporting team. Any member who~~  
7 ~~has knowledge that the member designated to report has failed to~~  
8 ~~do so shall thereafter make the report.~~

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

16 ~~(2) The internal procedures shall not require any employee~~  
17 ~~required to make reports pursuant to this article to disclose his or~~  
18 ~~her identity to the employer.~~

19 ~~(3) Reporting the information regarding a case of possible child~~  
20 ~~abuse or neglect to an employer, supervisor, school principal,~~  
21 ~~school counselor, coworker, or other person shall not be a substitute~~  
22 ~~for making a mandated report to an agency specified in Section~~  
23 ~~11165.9.~~

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

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

21     ~~SEC. 8. No reimbursement is required by this act pursuant to~~  
22 ~~Section 6 of Article XIII B of the California Constitution because~~  
23 ~~the only costs that may be incurred by a local agency or school~~  
24 ~~district will be incurred because this act creates a new crime or~~  
25 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
26 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
27 ~~the Government Code, or changes the definition of a crime within~~  
28 ~~the meaning of Section 6 of Article XIII B of the California~~  
29 ~~Constitution.~~