

ASSEMBLY BILL

No. 20

Introduced by Assembly Member Waldron

December 3, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 20, as introduced, 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 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.
State-mandated local program: yes.

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:

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

21 (b) This section does not apply to the activities of law
22 enforcement and prosecuting agencies in the investigation and
23 prosecution of criminal offenses or to legitimate medical, scientific,
24 or educational activities, or to lawful conduct between spouses.

25 (c) This section does not apply to matter which depicts a child
26 under the age of 18, which child is legally emancipated, including
27 lawful conduct between spouses when one or both are under the
28 age of 18.

29 (d) It does not constitute a violation of this section for a
30 telephone corporation, as defined by Section 234 of the Public
31 Utilities Code, to carry or transmit messages described in this
32 chapter or perform related activities in providing telephone
33 services.

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

35 311.2. (a) Every person who knowingly sends or causes to be
36 sent, or brings or causes to be brought, into this state for sale or
37 distribution, or in this state possesses, prepares, publishes,
38 produces, or prints, with intent to distribute or to exhibit to others,
39 or who offers to distribute, distributes, or exhibits to others, any
40 obscene matter is for a first offense, guilty of a misdemeanor. If

1 the person has previously been convicted of any violation of this
2 section, the court may, in addition to the punishment authorized
3 in Section 311.9, impose a fine not exceeding fifty thousand dollars
4 (\$50,000).

5 (b) Every person who knowingly sends or causes to be sent, or
6 brings or causes to be brought, into this state for sale or distribution,
7 or in this state possesses, prepares, publishes, produces, develops,
8 duplicates, or prints any representation of information, data, or
9 image, including, but not limited to, any film, filmstrip, photograph,
10 negative, slide, photocopy, videotape, video laser disc, computer
11 hardware, computer software, computer floppy disc, data storage
12 media, CD-ROM, or computer-generated equipment or any other
13 computer-generated image that contains or incorporates in any
14 manner, any film or filmstrip, with intent to distribute or to exhibit
15 to, or to exchange with, others for commercial consideration, or
16 who offers to distribute, distributes, or exhibits to, or exchanges
17 with, others for commercial consideration, any obscene matter,
18 knowing that the matter depicts a person under the age of 18 years
19 personally engaging in or personally simulating sexual conduct,
20 as defined in Section 311.4, is guilty of a felony and shall be
21 punished by imprisonment in the state prison for two, three, or six
22 years, or by a fine not exceeding one hundred thousand dollars
23 (\$100,000), in the absence of a finding that the defendant would
24 be incapable of paying that fine, or by both that fine and
25 imprisonment.

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

1 in Section 311.4, shall be punished by ~~imprisonment in the county~~
2 ~~jail for up to one year, or by a fine not exceeding two thousand~~
3 ~~dollars (\$2,000), or by both that fine and imprisonment, or by~~
4 imprisonment in the state prison. It is not necessary to prove
5 commercial consideration or that the matter is obscene in order to
6 establish a violation of this subdivision. ~~If a person has been~~
7 ~~previously convicted of a violation of this subdivision, he or she~~
8 ~~is guilty of a felony.~~

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

27 (e) Subdivisions (a) to (d), inclusive, do not apply to the
28 activities of law enforcement and prosecuting agencies in the
29 investigation and prosecution of criminal offenses, to legitimate
30 medical, scientific, or educational activities, or to lawful conduct
31 between spouses.

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

35 (g) It does not constitute a violation of this section for a
36 telephone corporation, as defined by Section 234 of the Public
37 Utilities Code, to carry or transmit messages described in this
38 chapter or to perform related activities in providing telephone
39 services.

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

1 311.3. (a) A person is guilty of sexual exploitation of a child
2 if he or she knowingly develops, duplicates, prints, or exchanges
3 any representation of information, data, or image, including, but
4 not limited to, any film, filmstrip, photograph, negative, slide,
5 photocopy, videotape, video laser disc, computer hardware,
6 computer software, computer floppy disc, data storage media,
7 CD-ROM, or computer-generated equipment or any other
8 computer-generated image that contains or incorporates in any
9 manner, any film or filmstrip that depicts a person under the age
10 of 18 years engaged in an act of sexual conduct.

11 (b) As used in this section, "sexual conduct" means any of the
12 following:

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

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

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

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

21 (5) Exhibition of the genitals or the pubic or rectal area of any
22 person for the purpose of sexual stimulation of the viewer.

23 (6) Defecation or urination for the purpose of sexual stimulation
24 of the viewer.

25 (c) Subdivision (a) does not apply to the activities of law
26 enforcement and prosecution agencies in the investigation and
27 prosecution of criminal offenses or to legitimate medical, scientific,
28 or educational activities, or to lawful conduct between spouses.

29 (d) Every person who violates subdivision (a) shall be punished
30 ~~by a fine of not more than two thousand dollars (\$2,000) or by~~
31 ~~imprisonment in a county jail for not more than one year, or by~~
32 ~~both that fine and imprisonment. If the person has been previously~~
33 ~~convicted of a violation of subdivision (a) or any section of this~~
34 ~~chapter, he or she shall be punished by imprisonment in the state~~
35 ~~prison.~~

36 (e) The provisions of this section do not apply to an employee
37 of a commercial film developer who is acting within the scope of
38 his or her employment and in accordance with the instructions of
39 his or her employer, provided that the employee has no financial

1 interest in the commercial developer by which he or she is
2 employed.

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

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

7 311.11. (a) Every person who knowingly possesses or controls
8 any matter, representation of information, data, or image, including,
9 but not limited to, any film, filmstrip, photograph, negative, slide,
10 photocopy, videotape, video laser disc, computer hardware,
11 computer software, computer floppy disc, data storage media,
12 CD-ROM, or computer-generated equipment or any other
13 computer-generated image that contains or incorporates in any
14 manner, any film or filmstrip, the production of which involves
15 the use of a person under the age of 18 years, knowing that the
16 matter depicts a person under the age of 18 years personally
17 engaging in or simulating sexual conduct, as defined in subdivision
18 (d) of Section 311.4, is guilty of a felony and shall be punished by
19 imprisonment in the state prison, ~~or a county jail for up to one~~
20 ~~year, or by a fine not exceeding two thousand five hundred dollars~~
21 ~~(\$2,500), or by both the fine and imprisonment.~~

22 (b) Every person who commits a violation of subdivision (a),
23 and who has been previously convicted of a violation of this
24 section, an offense requiring registration under the Sex Offender
25 Registration Act, or an attempt to commit any of the
26 above-mentioned offenses, is guilty of a felony and shall be
27 punished by imprisonment in the state prison for two, four, or six
28 years.

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

31 (d) This section does not apply to drawings, figurines, statues,
32 or any film rated by the Motion Picture Association of America,
33 nor does it apply to live or recorded telephone messages when
34 transmitted, disseminated, or distributed as part of a commercial
35 transaction.

36 SEC. 5. Section 1203.4 of the Penal Code is amended to read:

37 1203.4. (a) (1) In any case in which a defendant has fulfilled
38 the conditions of probation for the entire period of probation, or
39 has been discharged prior to the termination of the period of
40 probation, or in any other case in which a court, in its discretion

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

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

34 (3) Dismissal of an accusation or information underlying a
35 conviction pursuant to this section does not permit a person
36 prohibited from holding public office as a result of that conviction
37 to hold public office.

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

1 (b) Subdivision (a) of this section does not apply to any
 2 misdemeanor that is within the provisions of Section 42002.1 of
 3 the Vehicle Code, to any violation of subdivision (c) of Section
 4 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
 5 or subdivision (j) of Section 289, *Section 311.1, 311.2, 311.3, or*
 6 *311.11, or any felony conviction pursuant to subdivision (d) of*
 7 *Section 261.5, or to any infraction.*

8 (c) (1) Except as provided in paragraph (2), subdivision (a)
 9 does not apply to a person who receives a notice to appear or is
 10 otherwise charged with a violation of an offense described in
 11 subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle
 12 Code.

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

17 (d) A person who petitions for a change of plea or setting aside
 18 of a verdict under this section may be required to reimburse the
 19 court for the actual costs of services rendered, whether or not the
 20 petition is granted and the records are sealed or expunged, at a rate
 21 to be determined by the court not to exceed one hundred fifty
 22 dollars (\$150), and to reimburse the county for the actual costs of
 23 services rendered, whether or not the petition is granted and the
 24 records are sealed or expunged, at a rate to be determined by the
 25 county board of supervisors not to exceed one hundred fifty dollars
 26 (\$150), and to reimburse any city for the actual costs of services
 27 rendered, whether or not the petition is granted and the records are
 28 sealed or expunged, at a rate to be determined by the city council
 29 not to exceed one hundred fifty dollars (\$150). Ability to make
 30 this reimbursement shall be determined by the court using the
 31 standards set forth in paragraph (2) of subdivision (g) of Section
 32 987.8 and shall not be a prerequisite to a person’s eligibility under
 33 this section. The court may order reimbursement in any case in
 34 which the petitioner appears to have the ability to pay, without
 35 undue hardship, all or any portion of the costs for services
 36 established pursuant to this subdivision.

37 (e) (1) Relief shall not be granted under this section unless the
 38 prosecuting attorney has been given 15 days’ notice of the petition
 39 for relief. The probation officer shall notify the prosecuting attorney
 40 when a petition is filed, pursuant to this section.

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

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

7 (g) Notwithstanding the above provisions or any other provision
8 of law, the Governor shall have the right to pardon a person
9 convicted of a violation of subdivision (c) of Section 286, Section
10 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
11 (j) of Section 289, if there are extraordinary circumstances.

12 SEC. 6. Section 11165.7 of the Penal Code, as amended by
13 Section 1.15 of Chapter 521 of the Statutes of 2012, is amended
14 to read:

15 11165.7. (a) As used in this article, “mandated reporter” is
16 defined as any of the following:

- 17 (1) A teacher.
- 18 (2) An instructional aide.
- 19 (3) A teacher’s aide or teacher’s assistant employed by a public
20 or private school.
- 21 (4) A classified employee of a public school.
- 22 (5) An administrative officer or supervisor of child welfare and
23 attendance, or a certificated pupil personnel employee of a public
24 or private school.
- 25 (6) An administrator of a public or private day camp.
- 26 (7) An administrator or employee of a public or private youth
27 center, youth recreation program, or youth organization.
- 28 (8) An administrator or employee of a public or private
29 organization whose duties require direct contact and supervision
30 of children.
- 31 (9) An employee of a county office of education or the State
32 Department of Education whose duties bring the employee into
33 contact with children on a regular basis.
- 34 (10) A licensee, an administrator, or an employee of a licensed
35 community care or child day care facility.
- 36 (11) A Head Start program teacher.
- 37 (12) A licensing worker or licensing evaluator employed by a
38 licensing agency, as defined in Section 11165.11.
- 39 (13) A public assistance worker.

- 1 (14) An employee of a child care institution, including, but not
2 limited to, foster parents, group home personnel, and personnel of
3 residential care facilities.
- 4 (15) A social worker, probation officer, or parole officer.
- 5 (16) An employee of a school district police or security
6 department.
- 7 (17) A person who is an administrator or presenter of, or a
8 counselor in, a child abuse prevention program in a public or
9 private school.
- 10 (18) A district attorney investigator, inspector, or local child
11 support agency caseworker, unless the investigator, inspector, or
12 caseworker is working with an attorney appointed pursuant to
13 Section 317 of the Welfare and Institutions Code to represent a
14 minor.
- 15 (19) A peace officer, as defined in Chapter 4.5 (commencing
16 with Section 830) of Title 3 of Part 2, who is not otherwise
17 described in this section.
- 18 (20) A firefighter, except for volunteer firefighters.
- 19 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
20 resident, intern, podiatrist, chiropractor, licensed nurse, dental
21 hygienist, optometrist, marriage and family therapist, clinical social
22 worker, professional clinical counselor, or any other person who
23 is currently licensed under Division 2 (commencing with Section
24 500) of the Business and Professions Code.
- 25 (22) An emergency medical technician I or II, paramedic, or
26 other person certified pursuant to Division 2.5 (commencing with
27 Section 1797) of the Health and Safety Code.
- 28 (23) A psychological assistant registered pursuant to Section
29 2913 of the Business and Professions Code.
- 30 (24) A marriage and family therapist trainee, as defined in
31 subdivision (c) of Section 4980.03 of the Business and Professions
32 Code.
- 33 (25) An unlicensed marriage and family therapist intern
34 registered under Section 4980.44 of the Business and Professions
35 Code.
- 36 (26) A state or county public health employee who treats a minor
37 for venereal disease or any other condition.
- 38 (27) A coroner.
- 39 (28) A medical examiner or other person who performs
40 autopsies.

1 (29) A commercial film and photographic print or image
2 processor as specified in subdivision (e) of Section 11166. As used
3 in this article, “commercial film and photographic print or image
4 processor” means a person who develops exposed photographic
5 film into negatives, slides, or prints, or who makes prints from
6 negatives or slides, or who prepares, publishes, produces, develops,
7 duplicates, or prints any representation of information, data, or an
8 image, including, but not limited to, any film, filmstrip, photograph,
9 negative, slide, photocopy, videotape, video laser disk, computer
10 hardware, computer software, computer floppy disk, data storage
11 medium, CD-ROM, computer-generated equipment, or
12 computer-generated image, for compensation. The term includes
13 any employee of that person; it does not include a person who
14 develops film or makes prints or images for a public agency.

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

20 (31) An animal control officer or humane society officer. For
21 the purposes of this article, the following terms have the following
22 meanings:

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

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

30 (32) A clergy member, as specified in subdivision (d) of Section
31 11166. As used in this article, “clergy member” means a priest,
32 minister, rabbi, religious practitioner, or similar functionary of a
33 church, temple, or recognized denomination or organization.

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

36 (34) An employee of any police department, county sheriff’s
37 department, county probation department, or county welfare
38 department.

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

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

5 (37) A person providing services to a minor child under Section
6 12300 or 12300.1 of the Welfare and Institutions Code.

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

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

15 (40) A clinical counselor intern registered under Section 4999.42
16 of the Business and Professions Code.

17 (41) An employee or administrator of a public or private
18 postsecondary institution, whose duties bring the administrator or
19 employee into contact with children on a regular basis, or who
20 supervises those whose duties bring the administrator or employee
21 into contact with children on a regular basis, as to child abuse or
22 neglect occurring on that institution’s premises or at an official
23 activity of, or program conducted by, the institution. Nothing in
24 this paragraph shall be construed as altering the lawyer-client
25 privilege as set forth in Article 3 (commencing with Section 950)
26 of Chapter 4 of Division 8 of the Evidence Code.

27 (42) An athletic coach, athletic administrator, or athletic director
28 employed by any public or private school that provides any
29 combination of instruction for kindergarten, or grades 1 to 12,
30 inclusive.

31 (43) (A) A commercial computer technician as specified in
32 subdivision (e) of Section 11166. As used in this article,
33 “commercial computer technician” means a person who works for
34 a company that is in the business of repairing, installing, or
35 otherwise servicing a computer or computer component, including,
36 but not limited to, a computer part, device, memory storage or
37 recording mechanism, auxiliary storage recording or memory
38 capacity, or any other material relating to the operation and
39 maintenance of a computer or computer network system, for a fee.
40 An employer who provides an electronic communications service

1 or a remote computing service to the public shall be deemed to
2 comply with this article if that employer complies with Section
3 2258A of Title 18 of the United States Code.

4 (B) An employer of a commercial computer technician may
5 implement internal procedures for facilitating reporting consistent
6 with this article. These procedures may direct employees who are
7 mandated reporters under this paragraph to report materials
8 described in subdivision (e) of Section 11166 to an employee who
9 is designated by the employer to receive the reports. An employee
10 who is designated to receive reports under this subparagraph shall
11 be a commercial computer technician for purposes of this article.
12 A commercial computer technician who makes a report to the
13 designated employee pursuant to this subparagraph shall be deemed
14 to have complied with the requirements of this article and shall be
15 subject to the protections afforded to mandated reporters, including,
16 but not limited to, those protections afforded by Section 11172.

17 (44) Any athletic coach, including, but not limited to, an
18 assistant coach or a graduate assistant involved in coaching, at
19 public or private postsecondary institutions.

20 (45) *A librarian, as specified in subdivision (e) of Section 11166.*

21 (b) Except as provided in paragraph (35) of subdivision (a),
22 volunteers of public or private organizations whose duties require
23 direct contact with and supervision of children are not mandated
24 reporters but are encouraged to obtain training in the identification
25 and reporting of child abuse and neglect and are further encouraged
26 to report known or suspected instances of child abuse or neglect
27 to an agency specified in Section 11165.9.

28 (c) Employers are strongly encouraged to provide their
29 employees who are mandated reporters with training in the duties
30 imposed by this article. This training shall include training in child
31 abuse and neglect identification and training in child abuse and
32 neglect reporting. Whether or not employers provide their
33 employees with training in child abuse and neglect identification
34 and reporting, the employers shall provide their employees who
35 are mandated reporters with the statement required pursuant to
36 subdivision (a) of Section 11166.5.

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

1 (e) Unless otherwise specifically provided, the absence of
2 training shall not excuse a mandated reporter from the duties
3 imposed by this article.

4 (f) Public and private organizations are encouraged to provide
5 their volunteers whose duties require direct contact with and
6 supervision of children with training in the identification and
7 reporting of child abuse and neglect.

8 SEC. 7. Section 11166 of the Penal Code, as amended by
9 Section 2.5 of Chapter 521 of the Statutes of 2012, is amended to
10 read:

11 11166. (a) Except as provided in subdivision (d), and in
12 Section 11166.05, a mandated reporter shall make a report to an
13 agency specified in Section 11165.9 whenever the mandated
14 reporter, in his or her professional capacity or within the scope of
15 his or her employment, has knowledge of or observes a child whom
16 the mandated reporter knows or reasonably suspects has been the
17 victim of child abuse or neglect. The mandated reporter shall make
18 an initial report by telephone to the agency immediately or as soon
19 as is practicably possible, and shall prepare and send, fax, or
20 electronically transmit a written followup report within 36 hours
21 of receiving the information concerning the incident. The mandated
22 reporter may include with the report any nonprivileged
23 documentary evidence the mandated reporter possesses relating
24 to the incident.

25 (1) For purposes of this article, “reasonable suspicion” means
26 that it is objectively reasonable for a person to entertain a suspicion,
27 based upon facts that could cause a reasonable person in a like
28 position, drawing, when appropriate, on his or her training and
29 experience, to suspect child abuse or neglect. “Reasonable
30 suspicion” does not require certainty that child abuse or neglect
31 has occurred nor does it require a specific medical indication of
32 child abuse or neglect; any “reasonable suspicion” is sufficient.
33 For purposes of this article, the pregnancy of a minor does not, in
34 and of itself, constitute a basis for a reasonable suspicion of sexual
35 abuse.

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

1 (3) Any report made by a mandated reporter pursuant to this
2 section shall be known as a mandated report.

3 (b) If after reasonable efforts a mandated reporter is unable to
4 submit an initial report by telephone, he or she shall immediately
5 or as soon as is practicably possible, by fax or electronic
6 transmission, make a one-time automated written report on the
7 form prescribed by the Department of Justice, and shall also be
8 available to respond to a telephone followup call by the agency
9 with which he or she filed the report. A mandated reporter who
10 files a one-time automated written report because he or she was
11 unable to submit an initial report by telephone is not required to
12 submit a written followup report.

13 (1) The one-time automated written report form prescribed by
14 the Department of Justice shall be clearly identifiable so that it is
15 not mistaken for a standard written followup report. In addition,
16 the automated one-time report shall contain a section that allows
17 the mandated reporter to state the reason the initial telephone call
18 was not able to be completed. The reason for the submission of
19 the one-time automated written report in lieu of the procedure
20 prescribed in subdivision (a) shall be captured in the Child Welfare
21 Services/Case Management System (CWS/CMS). The department
22 shall work with stakeholders to modify reporting forms and the
23 CWS/CMS as is necessary to accommodate the changes enacted
24 by these provisions.

25 (2) This subdivision shall not become operative until the
26 CWS/CMS is updated to capture the information prescribed in this
27 subdivision.

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

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

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

1 (c) Any mandated reporter who fails to report an incident of
2 known or reasonably suspected child abuse or neglect as required
3 by this section is guilty of a misdemeanor punishable by up to six
4 months confinement in a county jail or by a fine of one thousand
5 dollars (\$1,000) or by both that imprisonment and fine. If a
6 mandated reporter intentionally conceals his or her failure to report
7 an incident known by the mandated reporter to be abuse or severe
8 neglect under this section, the failure to report is a continuing
9 offense until an agency specified in Section 11165.9 discovers the
10 offense.

11 (d) (1) A clergy member who acquires knowledge or a
12 reasonable suspicion of child abuse or neglect during a penitential
13 communication is not subject to subdivision (a). For the purposes
14 of this subdivision, “penitential communication” means a
15 communication, intended to be in confidence, including, but not
16 limited to, a sacramental confession, made to a clergy member
17 who, in the course of the discipline or practice of his or her church,
18 denomination, or organization, is authorized or accustomed to hear
19 those communications, and under the discipline, tenets, customs,
20 or practices of his or her church, denomination, or organization,
21 has a duty to keep those communications secret.

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

27 (3) (A) On or before January 1, 2004, a clergy member or any
28 custodian of records for the clergy member may report to an agency
29 specified in Section 11165.9 that the clergy member or any
30 custodian of records for the clergy member, prior to January 1,
31 1997, in his or her professional capacity or within the scope of his
32 or her employment, other than during a penitential communication,
33 acquired knowledge or had a reasonable suspicion that a child had
34 been the victim of sexual abuse that the clergy member or any
35 custodian of records for the clergy member did not previously
36 report the abuse to an agency specified in Section 11165.9. The
37 provisions of Section 11172 shall apply to all reports made pursuant
38 to this paragraph.

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

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

8 (e) (1) Any commercial film, photographic print, or image
9 processor who has knowledge of or observes, within the scope of
10 his or her professional capacity or employment, any film,
11 photograph, videotape, negative, slide, or any representation of
12 information, data, or an image, including, but not limited to, any
13 film, filmstrip, photograph, negative, slide, photocopy, videotape,
14 video laser disc, computer hardware, computer software, computer
15 floppy disk, data storage medium, CD-ROM, computer-generated
16 equipment, or computer-generated image depicting a child under
17 16 years of age engaged in an act of sexual conduct, shall
18 immediately, or as soon as practically possible, telephonically
19 report the instance of suspected abuse to the law enforcement
20 agency located in the county in which the images are seen. Within
21 36 hours of receiving the information concerning the incident, the
22 reporter shall prepare and send, fax, or electronically transmit a
23 written followup report of the incident with a copy of the image
24 or material attached.

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

1 followup report of the incident with a brief description of the
2 images or materials.

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

19 ~~(3)~~

20 (4) For purposes of this article, “commercial computer
21 technician” includes an employee designated by an employer to
22 receive reports pursuant to an established reporting process
23 authorized by subparagraph (B) of paragraph (41) of subdivision
24 (a) of Section 11165.7.

25 ~~(4)~~

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

30 ~~(5)~~

31 (6) As used in this subdivision, “sexual conduct” means any of
32 the following:

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

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

37 (C) Masturbation for the purpose of sexual stimulation of the
38 viewer.

39 (D) Sadoomasochistic abuse for the purpose of sexual stimulation
40 of the viewer.

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

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

9 (g) Any other person who has knowledge of or observes a child
10 whom he or she knows or reasonably suspects has been a victim
11 of child abuse or neglect may report the known or suspected
12 instance of child abuse or neglect to an agency specified in Section
13 11165.9. For purposes of this section, “any other person” includes
14 a mandated reporter who acts in his or her private capacity and
15 not in his or her professional capacity or within the scope of his
16 or her employment.

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

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

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

35 (3) Reporting the information regarding a case of possible child
36 abuse or neglect to an employer, supervisor, school principal,
37 school counselor, coworker, or other person shall not be a substitute
38 for making a mandated report to an agency specified in Section
39 11165.9.

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

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

38 SEC. 8. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O