

AMENDED IN ASSEMBLY APRIL 4, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2323

Introduced by Assembly Member Rubio

February 13, 2018

An act to amend Section 11167.5 of, and to add Section 11166.09 to, the Penal Code, relating to child abuse or neglect.

LEGISLATIVE COUNSEL'S DIGEST

AB 2323, as amended, Rubio. Child abuse or neglect: foster children.

Existing law, the Child Abuse and Neglect Reporting Act, establishes procedures for the reporting and investigation suspected child abuse or neglect. The act requires certain professionals, including specified health practitioners and social workers, known as “mandated reporters,” to report known or suspected child abuse or neglect to a local law enforcement agency or a county welfare or probation department, as specified. Existing law states the Legislature’s intent that those receiving agencies in each county develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases, and requires the local law enforcement agency to report investigations of suspected child abuse or neglect to the county welfare or probation department within 36 hours after starting its investigation. Existing law requires the receiving agencies to, within 24 hours of receiving a report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services, notify the licensing office with jurisdiction over that facility. Existing law makes reports of child abuse or neglect confidential and only authorizes the disclosure of the reports to certain individuals or entities.

Existing law generally provides for the placement of children in foster care, and provides for the licensure and regulation by the State Department of Social Services of certain community care facilities that provide care for foster children, including short-term residential therapeutic programs and transitional housing placement providers.

This bill would, ~~in cases in which a receiving agency~~ *when a receiving entity receives a report reported allegation* of child abuse or neglect that involves a child in foster care in which the *alleged* abuse or neglect occurred in a community care facility, require the receiving ~~agencies~~ *entity* to coordinate investigation efforts with the licensing agency, as specified, and notify the Office of the State Foster Care Ombudsperson within 24 hours of receiving the report, and *would* require an investigation conducted by the receiving ~~agency~~ *entity* or the licensing agency to be completed ~~within 30 days of the receipt of the initial report.~~ *no later than 30 days after the initial report was received by the entity.* The bill would also add the Office of the State Foster Care Ombudsperson, as specified, to the list of individuals and entities to which reports may be disclosed. By imposing *new* duties on local officials, the bill would impose a state-mandated local program.

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

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 11166.09 is added to the Penal Code, to
2 read:

3 11166.09. All of the following shall apply ~~in cases in which~~
4 ~~an agency~~ *when an entity* specified in Section 11165.9 receives a
5 ~~report~~ *reported allegation* of child abuse or neglect pursuant to
6 Section 11166 that involves a child in foster care in which the
7 *alleged* abuse or neglect occurred in a community care facility, as
8 defined in Section 1502 of the Health and Safety Code:

9 (a) ~~The agency entity~~ shall, within 24 hours, notify the licensing
10 agency pursuant to Section ~~11166.1~~. ~~The agency~~ *11166.1 and* shall
11 coordinate efforts with the licensing agency to provide the most
12 immediate and appropriate response warranted to investigate the
13 ~~mandated report~~. ~~The agency~~ *reported allegation. The entity* and
14 the licensing agency may collaborate to develop protocols to
15 implement this subdivision.

16 (b) ~~The agency entity~~ shall, within 24 hours, notify the Office
17 of the State Foster Care ~~Ombudsperson~~. *Ombudsperson for*
18 *purposes of carrying out the duties described in subdivision (a) of*
19 *Section 16164 of the Welfare and Institutions Code*. Upon
20 completion of the investigation, ~~the agency entity~~ and the licensing
21 agency shall send a copy of its investigation report ~~and any other~~
22 ~~pertinent materials~~ to the Office of the State Foster Care
23 Ombudsperson.

24 (c) (1) An investigation of the ~~report~~ *reported allegation*
25 conducted by ~~the agency entity~~ or the licensing agency shall
26 include, but not be limited to, all of the following:

27 (A) A face-to-face interview with the suspected victim of child
28 abuse or neglect.

29 (B) A face-to-face interview with any other ~~children~~ *child who*
30 *is believed by the investigator to have knowledge of the alleged*
31 *incident of child abuse or neglect, and who was residing in the*
32 *community care facility at the time of the* ~~reported incident~~ *alleged*
33 *incident of child abuse or neglect.*

34 (C) A face-to-face interview with any adults residing in, or any
35 staff present at, the community care facility at the time of the
36 ~~reported~~ *alleged* incident of child abuse or neglect.

1 (D) An investigator shall, to the best of his or her ability,
2 maintain the privacy of all minors and nonminor dependents
3 involved in the investigation.

4 (2) An interview with the suspected victim of child abuse or
5 neglect and any other children shall be conducted separate and
6 apart from the suspected offender.

7 (d) An investigation conducted by the ~~agency~~ entity or the
8 licensing agency shall be completed ~~within 30 days of the receipt~~
9 ~~of the initial report.~~ *no later than 30 days after the initial report*
10 *was received by the entity.*

11 SEC. 2. Section 11167.5 of the Penal Code is amended to read:

12 11167.5. (a) The reports required by Sections 11166 and
13 11166.2, or authorized by Section 11166.05, and child abuse or
14 neglect investigative reports that result in a summary report being
15 filed with the Department of Justice pursuant to subdivision (a) of
16 Section 11169 shall be confidential and may be disclosed only as
17 provided in subdivision (b). A violation of the confidentiality
18 provided by this article is a misdemeanor punishable by
19 imprisonment in a county jail not to exceed six months, by a fine
20 of five hundred dollars (\$500), or by both that imprisonment and
21 fine.

22 (b) Reports of suspected child abuse or neglect and information
23 contained therein may be disclosed only to the following:

24 (1) Persons or agencies to whom disclosure of the identity of
25 the reporting party is permitted under Section 11167.

26 (2) Persons or agencies to whom disclosure of information is
27 permitted under subdivision (b) of Section 11170 or subdivision
28 (a) of Section 11170.5.

29 (3) Persons or agencies with whom investigations of child abuse
30 or neglect are coordinated under the regulations promulgated under
31 Section 11174.

32 (4) Multidisciplinary personnel teams, as defined in subdivision
33 (d) of Section 18951 of the Welfare and Institutions Code.

34 (5) Persons or agencies responsible for the licensing of facilities
35 that care for children, as specified in Section 11165.7.

36 (6) The State Department of Social Services or any county, as
37 specified in paragraph (4) of subdivision (b) of Section 11170,
38 when an individual has applied for a license to operate a
39 community care facility or child day care facility, or for a certificate
40 of approval to operate a certified family home or resource family

1 home, or for employment or presence in a licensed facility, certified
2 family home, or resource family home, or when a complaint alleges
3 child abuse or neglect by a licensee or employee of, or individual
4 approved to be present in, a licensed facility, certified family home,
5 or resource family home.

6 (7) Hospital scan teams. As used in this paragraph, “hospital
7 scan team” means a team of three or more persons established by
8 a hospital, or two or more hospitals in the same county, consisting
9 of health care professionals and representatives of law enforcement
10 and child protective services, the members of which are engaged
11 in the identification of child abuse or neglect. The disclosure
12 authorized by this section includes disclosure among all hospital
13 scan teams.

14 (8) Coroners and medical examiners when conducting a post
15 mortem examination of a child.

16 (9) The Board of Parole Hearings, which may subpoena an
17 employee of a county welfare department who can provide relevant
18 evidence and reports that both (A) are not unfounded, pursuant to
19 Section 11165.12, and (B) concern only the current incidents upon
20 which parole revocation proceedings are pending against a parolee
21 charged with child abuse or neglect. The reports and information
22 shall be confidential pursuant to subdivision (d) of Section 11167.

23 (10) Personnel from an agency responsible for making a
24 placement of a child pursuant to Section 361.3 of, and Article 7
25 (commencing with Section 305) of Chapter 2 of Part 1 of Division
26 2 of, the Welfare and Institutions Code.

27 (11) Persons who have been identified by the Department of
28 Justice as listed in the Child Abuse Central Index pursuant to
29 paragraph (7) of subdivision (b) of Section 11170 or subdivision
30 (c) of Section 11170, or persons who have verified with the
31 Department of Justice that they are listed in the Child Abuse
32 Central Index as provided in subdivision (f) of Section 11170.
33 Disclosure under this paragraph is required notwithstanding the
34 California Public Records Act, Chapter 3.5 (commencing with
35 Section 6250) of Division 7 of Title 1 of the Government Code.
36 This paragraph ~~shall~~ *does* not preclude a submitting agency prior
37 to disclosure from redacting any information necessary to maintain
38 confidentiality as required by law.

39 (12) Out-of-state law enforcement agencies conducting an
40 investigation of child abuse or neglect only when an agency makes

1 the request for reports of suspected child abuse or neglect in writing
2 and on official letterhead, or as designated by the Department of
3 Justice, identifying the suspected abuser or victim by name and
4 date of birth or approximate age. The request shall be signed by
5 the department supervisor of the requesting law enforcement
6 agency. The written request shall cite the out-of-state statute or
7 interstate compact provision that requires that the information
8 contained within these reports is to be disclosed only to law
9 enforcement, prosecutorial entities, or multidisciplinary
10 investigative teams, and shall cite the safeguards in place to prevent
11 unlawful disclosure provided by the requesting state or the
12 applicable interstate compact provision.

13 (13) Out-of-state agencies responsible for approving prospective
14 foster or adoptive parents for placement of a child only when the
15 agency makes the request in compliance with the Adam Walsh
16 Child Protection and Safety Act of 2006 (Public Law 109-248).
17 The request shall also cite the safeguards in place to prevent
18 unlawful disclosure provided by the requesting state or the
19 applicable interstate compact provision and indicate that the
20 requesting state shall maintain continual compliance with the
21 requirement in paragraph (20) of subdivision (a) of Section 671
22 of Title 42 of the United States Code that requires the state have
23 in place safeguards to prevent the unauthorized disclosure of
24 information in any child abuse and neglect registry maintained by
25 the state and prevent the information from being used for a purpose
26 other than the conducting of background checks in foster or
27 adoptive placement cases.

28 (14) Each chairperson of a county child death review team, or
29 his or her designee, to whom disclosure of information is permitted
30 under this article, relating to the death of one or more children and
31 any prior child abuse or neglect investigation reports maintained
32 involving the same victim, siblings, or suspects. Local child death
33 review teams may share any relevant information regarding case
34 reviews involving child death with other child death review teams.

35 (15) The Office of the State Foster Care Ombudsperson when
36 the reported ~~incident~~ *allegation* of child abuse or neglect involves
37 a child in foster care and occurred in a community care facility,
38 as defined in Section 1502 of the Health and Safety Code.

39 (c) Authorized persons within county health departments shall
40 be permitted to receive copies of any reports made by health

1 practitioners, as defined in paragraphs (21) to (28), inclusive, of
 2 subdivision (a) of Section 11165.7, and pursuant to Section
 3 11165.13, and copies of assessments completed pursuant to
 4 Sections 123600 and 123605 of the Health and Safety Code, to
 5 the extent permitted by federal law. Any information received
 6 pursuant to this subdivision is protected by subdivision (e).

7 (d) This section does not require the Department of Justice to
 8 disclose information contained in records maintained under Section
 9 11170 or under the regulations promulgated pursuant to Section
 10 11174, except as otherwise provided in this article.

11 (e) This section does not allow disclosure of any reports or
 12 records relevant to the reports of child abuse or neglect if the
 13 disclosure would be prohibited by any other state or federal law
 14 applicable to the reports or records relevant to the reports of child
 15 abuse or neglect.

16 ~~SEC. 3. If the Commission on State Mandates determines that~~
 17 ~~this act contains costs mandated by the state, reimbursement to~~
 18 ~~local agencies and school districts for those costs shall be made~~
 19 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
 20 ~~4 of Title 2 of the Government Code.~~

21 *SEC. 3. To the extent that this act has an overall effect of*
 22 *increasing certain costs already borne by a local agency for*
 23 *programs or levels of service mandated by the 2011 Realignment*
 24 *Legislation within the meaning of Section 36 of Article XIII of the*
 25 *California Constitution, it shall apply to local agencies only to the*
 26 *extent that the state provides annual funding for the cost increase.*
 27 *Any new program or higher level of service provided by a local*
 28 *agency pursuant to this act above the level for which funding has*
 29 *been provided shall not require a subvention of funds by the state*
 30 *or otherwise be subject to Section 6 of Article XIII B of the*
 31 *California Constitution.*

32 *However, if the Commission on State Mandates determines that*
 33 *this act contains other costs mandated by the state, reimbursement*
 34 *to local agencies and school districts for those costs shall be made*
 35 *pursuant to Part 7 (commencing with Section 17500) of Division*
 36 *4 of Title 2 of the Government Code.*

O