

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

(916) 445-6410



December 24, 1984

ALL-COUNTY INFORMATION NOTICE NO. 1-112-84

TO: ALL COUNTY WELFARE DEPARTMENTS
ALL COUNTY PROBATION DEPARTMENTS
ALL COUNTY COUNSELS

SUBJECT: ASSEMBLY BILL (AB) 2710 (CHAPTER 1718, STATUTES OF 1984)

AB 2710 (Chapter 1718, Statutes of 1984) was signed into law on September 30, 1984 and becomes effective January 1, 1985. This bill amends and expands certain provisions of the child abuse reporting law as follows:

- Requires all county welfare and probation departments to have each employee hired on and after January 1, 1985 sign a statement, as a prerequisite of employment, that he/she has knowledge of the provisions of Penal Code (PC) Section 11166 and will comply with those provisions.

The statement form shall include the following provisions:

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

The costs for printing, distribution and retention of the signed statements shall be borne by the employer.

- Exempts mandated child abuse reporters from civil or criminal liability for reporting known or suspected child abuse as required or authorized by the child abuse reporting law.
- Allows mandated reporters to file a claim for reimbursement with the State Board of Control for reasonable attorney's fees incurred in any action brought against him or her on the basis of making a report required or authorized by the child abuse reporting law.

- Requires that any person failing to report an instance of child abuse which he/she knows to exist or reasonably should know to exist is guilty of a misdemeanor and is punishable by jail confinement not to exceed 6 months, or by a fine not to exceed \$1,000 or by both.

Section 2 of the bill is inoperative and replaced by Section 3, as this bill was enacted after AB 2702.

The text of the chaptered bill is attached for your information. If you have any questions regarding this legislation, please contact your Adult and Family Services Operations consultant at (916) 322-6671.



LOREN D. SUTER
Deputy Director
Adult and Family Services Division

Attachment

CHAPTER 1718

An act to amend Section 11172 of, and to add Section 11166.5 to, the Penal Code, relating to child abuse reporting.

[Approved by Governor September 30, 1984. Filed with Secretary of State September 30, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2710, Clute. Child abuse reporting.

Under existing law, certain persons are required to report known or suspected instances of child abuse, as specified. Failure to make such a report is a misdemeanor.

This bill would require any person who enters into employment on or after January 1, 1985, in a capacity such that he or she would be required to make such a report, prior to commencing the employment, as a prerequisite to that employment, to sign a statement on a form provided to him or her by the employer, to the effect that he or she knows of the requirement to make such a report and will comply therewith. It would prescribe the contents of that statement and would provide that the costs related to the printing, distribution, and filing of the statements shall be borne by the employer. Inasmuch as local public entities employ persons who would be required to sign these forms, it would establish a state-mandated local program.

The bill also would provide that any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing such access.

This bill also would incorporate further amendments to Section 11172 of the Penal Code contingent upon the enactment and prior chaptering of AB 2702.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the act would remain in effect unless and until they are amended or repealed by a later enacted act.

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

SECTION 1. Section 11166.5 is added to the Penal Code, to read:
11166.5. Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, or nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

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

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

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

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

The signed statements shall be retained by the employer. The cost

of printing, distribution, and filing of these statements shall be borne by the employer.

SEC. 2. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

Handwritten initials "JW" and "JW" are written vertically in the left margin next to the first two paragraphs.

(b) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars (\$500) or by both.

(c) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing such access.

SEC. 3. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed

to grant immunity from this liability with respect to any other use of the photographs.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, medical practitioner, nonmedical practitioner, or an employee of a child protective agency may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars (\$1,000) or by both.

SEC. 4. Section 3 of this bill incorporates amendments to Section 11172 of the Penal Code proposed by both this bill and AB 2702. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985; (2) each bill amends Section 11172 of the Penal Code, and (3) this bill is enacted after AB 2702, in which case Section 2 of this bill shall not become operative.

SEC. 5. Notwithstanding Section 2231.5 of the Revenue and

Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 6. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

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