

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

A Resolution of the City Council of the )  
City of Lafayette Adopting and )  
Implementing the Lafayette ) Resolution No. 2013-42  
Mandated Reporting Policy )

WHEREAS, the City of Lafayette strives to conduct all of its activities in a responsible, legal, and accountable manner; and

WHEREAS, in furtherance of that goal, the City Council wishes to implement a policy which identifies City employees who are mandated reporters under the California Child Abuse and Reporting Act, establishes procedures for notifying and training employees about their responsibilities, and establishes the process for reporting suspected abuse.

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council does hereby adopt the Lafayette Mandated Reporting Policy attached hereto as Exhibit A.

Section 2. This Resolution shall be effective immediately after its adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of said Council on November 12, 2013 by the following vote:

AYES: M. Anderson, Tatzin, Mitchell and Reilly


NOES: None

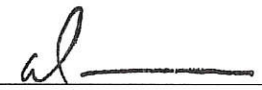
ABSTAIN: None

ABSENT: B. Andersson

ATTEST:

APPROVED:

  
\_\_\_\_\_  
Joanne Robbins, City Clerk

  
\_\_\_\_\_  
Mike Anderson, Mayor

**EXHIBIT A**  
MANDATED REPORTING POLICY  
[Attach behind this page]

## **ADMINISTRATIVE REGULATIONS**

### **Regulation Number 525**

**Date:** November 2013

**Subject:** Mandated Reporting

#### **525.0 Purpose**

The Child Abuse and Reporting Act (CANRA), Penal Code §§ 11164-11174.3, is designed to protect victims of child abuse and neglect by imposing a “mandatory reporting requirement on those whose professions bring them into contact with children.” It is the policy of the City to comply with its obligations under CANRA, to require that all City employees who are mandated reporters make required reports to child protection or law enforcement agencies, and more broadly to encourage all City employees who observe, have actual knowledge of, or reasonably suspect child abuse or neglect at a City facility or perpetrated by City personnel to promptly report the concern. To that end, this regulation:

- A. Identifies City employees who are mandated reporters under CANRA.
- B. Establishes the procedures for notifying employees of their CANRA responsibilities.
- C. Requires training for mandated reporters to ensure that applicable employees have access to the information needed to fulfill their mandated child abuse reporting obligations.
- D. Requires posting of mandated reporting procedures in a location readily accessible to all employees in the Police Department and the Parks & Recreation Department.

#### **525.1 Regulation**

- A. Mandated Reporters. CANRA defines professions identified as mandated reporters, including an administrator of a public day camp, and administrator or employee of a public youth center, youth recreation program, or youth organization, an administrator of a public organization whose duties require direct contact and supervision of children, and any employee of a police department. The following positions are mandated reporters: All city employees that perform as “child care custodians” are mandated child abuse reporters:
  - 1) All police department employees,
  - 2) Parks, Trails & Recreation Director, Recreation Program Managers and Recreation Coordinator
  - 3) Recreation program employees (e.g., Facilities Maintenance Workers, Parks Maintenance Specialist)
  - 4) Day care or drop in school program employees,

- 5) Camp counselors,
- 6) Youth program aides,
- 7) Youth commission aides, and
- 8) Any other positions identified by the Administrative Services Director whose professional duties may bring them into contact with children<sup>1</sup> or involve supervision of children.
- 9) Volunteers

## B. Reporting Obligations

- 1) **External Reports.** All mandated reporters must report observed or reasonably suspected child abuse or neglect<sup>2</sup> to a local law enforcement agency (e.g., police department or sheriff's department) or the county welfare department (e.g., Child Protective Services). (See Appendix A for contact information). Initial external reports must be made immediately by telephone, followed by a written report within 36 hours. The written report must include certain specific information specified in Section 11167(a) of CANRA, including:

- The name, business address, and telephone number of the mandated reporter;
- The capacity that makes the person a mandated reporter;
- The information that gave rise to the reasonable suspicion of child abuse or neglect;
- The source(s) of that information;
- The child's name (if known);
- The child's address and present location (if known);
- The name, address, and telephone number of the child's parent(s) or guardian(s) (if known);
- The names, addresses, telephone number(s) and other relevant personal information about the person(s) who might have abused or neglected the child (if known).

The written report may be submitted on form SS 8572 (Appendix B), also available online at [http://ag.ca.gov/childabuse/pdf/ss\\_8572.pdf](http://ag.ca.gov/childabuse/pdf/ss_8572.pdf) (instructions at [http://oag.ca.gov/sites/all/files/pdfs/childabuse/8572\\_instruct.pdf](http://oag.ca.gov/sites/all/files/pdfs/childabuse/8572_instruct.pdf))

**Note: Failure to make a mandated external report required under CANRA may result in criminal penalties.**

---

<sup>1</sup> "Children" means persons under the age of 18 years old.

<sup>2</sup> "Child abuse or neglect" includes physical injury or death inflicted by non-accidental means on a child by another person. It includes willful harm or injury, sexual abuse, sexual exploitation, child endangerment, and unlawful corporal punishment or injury. See the attached Frequently Asked Questions (Appendix C) for additional guidance on what type of conduct must be reported under CANRA and what constitutes a "reasonable suspicion."



- 2) **Internal Reports.** Under this Regulation, mandated reporters must also promptly report observed or reasonably suspected child abuse or neglect to their supervisor, manager or director, or to the Administrative Services Director. The internal reports may be made anonymously. Supervisors who receive such internal reports should promptly forward the report to the Administrative Services Director.

**Note: An internal report is *not* a substitute for a Mandated Reporter's required external reports under CANRA or other applicable laws.**

- 3) **Other City Employees, Officials and Volunteers.** City employees, officials and volunteers who are not otherwise Mandated Reporters required to make external reports are nevertheless required to report observed or suspected child abuse or neglect to their supervisor, manager or director, or to the Administrative Services Director.

- C. **Notification to Mandated Reporters.** Upon hire or a new term of employment with the City, employees who are identified as mandated reporters will be given information about their CANRA obligations as follows:

- 1) A document that addresses frequently asked questions regarding CANRA reporting (Appendix C), and
- 2) Copies of selected sections of the legislation – Penal Code §§ 11165.7, 11166 and 11167 (Appendix D).

- D. **Acknowledgment.** Employees who are identified as mandated reporters must sign an acknowledgement of their mandated reporter obligations. The acknowledgement will be kept in the employee's personnel file.

- E. **Mandatory Training.** Employees designated as mandated reporters must complete training in mandated reporting upon hire. The required training will be as directed by the Administrative Services Director, or his or her designee.

***NOTE: Mandated reporters must comply with the reporting duties imposed by CANRA whether or not they have received training from the City or any third party.***

- F. **Posting Requirements.** Information regarding how to report suspected child abuse or neglect will be posted at the Parks & Recreation Office in a location easily accessible by and visible to all employees.

- G. **Disciplinary Action.** Failure to make a mandated report under this Regulation may result in disciplinary action up to and including termination in accordance with City Personnel Rules and Administrative Policies.

- H. No Retaliation. No City employee or official may impede or inhibit a mandated reporter's duties, nor impose any sanction on any person making a good-faith report under CANRA or under this Regulation. No retaliation against anyone for making a good-faith report under this Regulation or CANRA will be tolerated. Retaliation against any good-faith reporter will be handled in accordance with City policies and procedures prohibiting harassment, discrimination, and retaliation.
- I. Indemnification and Immunity. The City will, consistent with applicable law, defend and indemnify City employees in any civil action arising from a good faith report of child abuse or neglect required or encouraged under this policy. CANRA provides immunity from liability and other protections to mandated reporters.

**525.2 Related Information.**

Appendix A – Frequently Asked Questions

Appendix B – Suspected Child Abuse Report (Form SS 8572)

Appendix C – Penal Code §§ 11165.7, 11166 and 11167

## FAQ for Mandated Reporters

### **Q**What is CANRA?

CANRA stands for the Child Abuse and Neglect Reporting Act, which is part of the California Penal Code. The complete definition of CANRA can be found beginning in section 11164 of the Penal Code. CANRA is a set of laws that were passed in 1974. Over the years, numerous amendments have expanded the definition of child abuse and the persons required to report.

### **Q**Why must you report?

The primary intent of the reporting law is **to protect the child from abuse and neglect**. However, a report of suspected child abuse or neglect may also present an opportunity to provide help for the family. Parents who are under stress may be unable to ask for help directly, and may not know where or how to access support/help. A report of suspected abuse or neglect may be the catalyst for bringing about change in the home environment, which in turn may help to lower the risk of abuse or neglect in the home.

### **Q**What is a mandated reporter?

A mandated reporter is someone who encounters children through their employment. Mandated reporters are required by the state of California to report any known or suspected instances of child abuse or neglect to the county child welfare department or to local law enforcement agency (such as the City's Police Department).

### **Q**Who are mandated reporters?

Though everyone should report child abuse, a number of professionals must report abuse or be held liable by law. The specific positions are listed in California Penal Code section 11165.7. Professions include but are not limited to:

- An administrator of day camp, public or private
- An administrator or employee of a public or private youth center, youth recreation program, or youth organization

- An administrator or employee of any organization whose duties require direct contact and supervision of children
- A peace officer
- A firefighter (except volunteers)
- Any EMT, paramedic, or other certified person
- Any employee of any police department, county sheriff's department, county probation department, or county welfare department

**Q How much proof do I need to provide that abuse or neglect has occurred?**

No proof of abuse or neglect is needed, only "reasonable suspicion" that child abuse or neglect may have occurred. If you are at all concerned about the possibility of abuse or neglect, you should report. Investigations will be conducted by law enforcement and/or the county child welfare department to determine if abuse or neglect has occurred. Delayed reporting while awaiting further information may hinder investigation by the appropriate agencies.

**Q How do I report?**

Mandated reporters must report to a county child welfare department or to local law enforcement immediately or as soon as practicable. The City's police department number is (925) 283-3860 and the county sheriff's number is (925) 335-1500. A written report must then be sent within 36 hours by fax, or it may be sent by electronic submission, if a secure system has been made available for that purpose in your county. Written reports must be submitted on the California Suspected Child Abuse Report Form 8572. The current version of this form (as of August 2013) can be downloaded at [http://ag.ca.gov/childabuse/pdf/ss\\_8572.pdf](http://ag.ca.gov/childabuse/pdf/ss_8572.pdf).

**Q Is there anyone available to answer questions?**

You can call the City Police Department at (925) 283-3860. A police officer can answer any questions you have.

**Q Can I report the abuse or neglect anonymously?**

No. Mandated reporters must identify themselves to the county child welfare department or the Police Department when making child abuse or neglect reports. However, persons who are not legally mandated may make anonymous reports.

**Q Who will know that I made the child abuse or neglect report?**

The law enforcement officer and/or county child welfare worker investigating the case will have your name in order to contact you about the report. Other professionals involved in the case, such as detectives, and attorneys will have access to your name as well. However, your identity cannot be disclosed to the family or anyone else not directly involved in the investigation of the case. If your case results in a trial and you are required to testify, your identity may be revealed in court.

**Q Do I need to tell the parents that I filed a report?**

You are not legally required to notify the parents that you are making a report.

**Q If I tell my supervisor about my concerns of abuse or neglect, have I met the obligation for mandated reporting?**

No. Telling a supervisor does not meet the mandated reporting requirement; the reporting duties are individual and cannot be delegated to another person.

**Q What if my supervisor tells me not to report my concerns because they are not sufficient, but I still have a reasonable suspicion of abuse?**

You must still make a report to one of the designated agencies.

**Q If the incident I report turns out not to be the result of abuse or neglect, can I be sued?**

As long as a child abuse or neglect report is made in good faith, the mandated reporter is legally protected from civil or criminal lawsuits. Any legally mandated reporter has immunity when making a report. No individual can be dismissed, disciplined or harassed for making a report of suspected child abuse.



**Q What happens if I am concerned about abuse or neglect and I do not make a report?**

Legally mandated reporters can be criminally liable for failing to report suspected abuse or neglect. The penalty for this misdemeanor is up to six months in jail and/or up to a \$1,000 fine. Mandated reporters can also be subject to a civil lawsuit, and found liable for damages, especially if the child-victim or another child is further victimized because of the failure to report.

**Q Will I have to testify in court?**

The majority of cases do not go to trial. When they do, and the mandated reporter who made the report may be required to testify, it is important to remember that the testimony may be essential for the protection of the child.

**Q What happens after the report is filed?**

After a report is filed, the county child welfare department or local law enforcement agency investigates the allegations. These agencies are also required to cross report suspected child abuse or neglect cases to each other. The county child welfare department or law enforcement agency investigation will result in one of three outcomes.

1. Unfounded report – the report is false, or does not involve abuse, such as an accidental injury
2. Substantiated report – it is determined that child abuse has occurred
3. Inconclusive report – there is insufficient evidence to determine whether or not abuse has occurred

Only substantiated reports of child abuse and severe neglect must be forwarded to the Department of Justice. The county child welfare department will determine if children need to be removed from the home or if services need to be offered to the parents or caregivers. Law enforcement agencies may also pursue criminal prosecution.

Print

# SUSPECTED CHILD ABUSE REPORT

Reset Form

To Be Completed by **Mandated Child Abuse Reporters**

Pursuant to Penal Code Section 11166

CASE NAME: \_\_\_\_\_

PLEASE PRINT OR TYPE

CASE NUMBER: \_\_\_\_\_

<b>A. REPORTING PARTY</b>	NAME OF MANDATED REPORTER		TITLE		MANDATED REPORTER CATEGORY			
	REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS			Street	City	Zip	DID MANDATED REPORTER WITNESS THE INCIDENT? YES NO	
	REPORTER'S TELEPHONE (DAYTIME) ( )		SIGNATURE		TODAY'S DATE			
<b>B. REPORT NOTIFICATION</b>	LAW ENFORCEMENT		COUNTY PROBATION		AGENCY			
	COUNTY WELFARE / CPS (Child Protective Services)							
	ADDRESS		Street	City	Zip	DATE/TIME OF PHONE CALL		
<b>C. VICTIM</b> One report per victim	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY	
	ADDRESS		Street	City	Zip	TELEPHONE ( )		
	PRESENT LOCATION OF VICTIM			SCHOOL		CLASS		GRADE
	PHYSICALLY DISABLED? YES NO	DEVELOPMENTALLY DISABLED? YES NO	OTHER DISABILITY (SPECIFY)			PRIMARY LANGUAGE SPOKEN IN HOME		
	IN FOSTER CARE? YES NO	IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE: DAY CARE    CHILD CARE CENTER    FOSTER FAMILY HOME    FAMILY FRIEND GROUP HOME OR INSTITUTION    RELATIVE'S HOME				TYPE OF ABUSE (CHECK ONE OR MORE) PHYSICAL    MENTAL    SEXUAL    NEGLECT OTHER (SPECIFY)		
	RELATIONSHIP TO SUSPECT			PHOTOS TAKEN? YES NO		DID THE INCIDENT RESULT IN THIS VICTIM'S DEATH? YES NO UNK		
	VICTIM'S SIBLINGS		NAME		BIRTHDATE	SEX	ETHNICITY	
1. _____		3. _____						
2. _____		4. _____						
<b>D. INVOLVED PARTIES</b> PARENTS/GUARDIANS	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY	
	ADDRESS		Street	City	Zip	HOME PHONE ( )	BUSINESS PHONE ( )	
	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY	
	ADDRESS		Street	City	Zip	HOME PHONE ( )	BUSINESS PHONE ( )	
<b>D. INVOLVED PARTIES</b> SUSPECT	SUSPECT'S NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY	
	ADDRESS		Street	City	Zip	TELEPHONE ( )		
	OTHER RELEVANT INFORMATION							
<b>E. INCIDENT INFORMATION</b>	IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX				IF MULTIPLE VICTIMS, INDICATE NUMBER:			
	DATE / TIME OF INCIDENT		PLACE OF INCIDENT					
	NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incidents involving the victim(s) or suspect)							

### DEFINITIONS AND INSTRUCTIONS ON REVERSE

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code Section 11169 to submit to DOJ a Child Abuse Investigation Report Form SS 8583 if (1) an active investigation was conducted and (2) the incident was determined not to be unfounded.

WHITE COPY-Police or Sheriff's Department; BLUE COPY-County Welfare or Probation Department; GREEN COPY- District Attorney's Office; YELLOW COPY-Reporting Party



## **Selected provisions of PENAL CODE SECTION 11164-11174.3 (current as of August 2013)**

Note: The complete text of CANRA may be found online at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=11001-12000&file=11164-11174.3>

11164. (a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

11165. As used in this article “child” means a person under the age of 18 years.

11165.1. As used in this article, “sexual abuse” means sexual assault or sexual exploitation as defined by the following:

(a) “Sexual assault” means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

(b) Conduct described as “sexual assault” includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator’s genitals in the presence of a child.

(c) “Sexual exploitation” refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child’s welfare, who knowingly permits

or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, “person responsible for a child’s welfare” means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

11165.2. As used in this article, “neglect” means the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) “Severe neglect” means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. “Severe neglect” also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) “General neglect” means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

11165.3. As used in this article, “the willful harming or injuring of a child or the endangering of the person or health of a child,” means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

11165.4. As used in this article, “unlawful corporal punishment or injury” means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of

physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

11165.5. As used in this article, the term “abuse or neglect in out-of-home care” includes physical injury or death inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, where the person responsible for the child’s welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. “Abuse or neglect in out-of-home care” does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

11165.6. As used in this article, the term “child abuse or neglect” includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. “Child abuse or neglect” does not include a mutual affray between minors. “Child abuse or neglect” does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

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

- (1) A teacher.
- (2) An instructional aide.
- (3) A teacher’s aide or teacher’s assistant employed by a public or private school.
- (4) A classified employee of a public school.
- (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.
- (6) An administrator of a public or private day camp.
- (7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
- (8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
- (9) An employee of a county office of education or the State Department of Education whose duties bring the employee into contact with children on a regular basis.
- (10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
- (11) A Head Start program teacher.
- (12) A licensing worker or licensing evaluator employed by a licensing agency, as defined in Section 11165.11.



- (13) A public assistance worker.
- (14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
- (15) A social worker, probation officer, or parole officer.
- (16) An employee of a school district police or security department.
- (17) A person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in a public or private school.
- (18) A district attorney investigator, inspector, or local child support agency caseworker, unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
- (19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.
- (20) A firefighter, except for volunteer firefighters.
- (21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.
- (22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.
- (23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.
- (24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
- (25) An unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code.
- (26) A state or county public health employee who treats a minor for venereal disease or any other condition.
- (27) A coroner.
- (28) A medical examiner or other person who performs autopsies.
- (29) A commercial film and photographic print or image processor as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print or image processor" means a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disk, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes any employee of that person; it does not include a person who develops film or makes prints or images for a public agency.
- (30) A child visitation monitor. As used in this article, "child visitation monitor" means a person who, for financial compensation, acts as a monitor of a visit between a child and another person when the monitoring of that visit has been ordered by a court of law.
- (31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:
  - (A) "Animal control officer" means a person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

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

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

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

(34) An employee of any police department, county sheriff's department, county probation department, or county welfare department.

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

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

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

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

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

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

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

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

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

(B) An employer of a commercial computer technician may implement internal procedures for facilitating reporting consistent with this article. These procedures may direct employees who are mandated reporters under this paragraph to report materials described in

subdivision (e) of Section 11166 to an employee who is designated by the employer to receive the reports. An employee who is designated to receive reports under this subparagraph shall be a commercial computer technician for purposes of this article. A commercial computer technician who makes a report to the designated employee pursuant to this subparagraph shall be deemed to have complied with the requirements of this article and shall be subject to the protections afforded to mandated reporters, including, but not limited to, those protections afforded by Section 11172.

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

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

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

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

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

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

11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written follow up report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any non-privileged documentary evidence the mandated reporter possesses relating to the incident.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (41) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

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

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

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

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting

and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

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

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

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

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

11166.01. (a) Except as provided in subdivision (b), any supervisor or administrator who violates paragraph (1) of subdivision (i) of section 11166 shall be punished by not more than six months in a county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) Notwithstanding Section 11162 or subdivision (c) of Section 11166, any mandated reporter who willfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect, in violation of this article, where that abuse or neglect results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

11166.05. Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.

11166.5. (a) (1) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, 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 those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

(2) The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

(3) This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect and information relevant to a report made pursuant to Section 11166.05 may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, and information relevant to a report made pursuant to Section 11166.05 may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a

proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166 or Section 11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names.

11172. (a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs, images, or material with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

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

(d) (1) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a

result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and

Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000).

(2) 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.

(e) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.