

Date of Hearing: March 10, 2020

Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1963 (Chu) – As Introduced January 21, 2020

**As Proposed to be Amended in Committee**

**SUMMARY:** Makes a human resource employee of a business that employs minors a mandated reporter of child abuse or neglect, and a person whose duties require direct contact with and supervision of minors in the performance of the minors duties in the workplace a mandated reporter of sexual abuse for the purpose of the Child Abuse and Neglect Reporting Act (CANRA).

**EXISTING LAW:**

- 1) Defines "mandated reporter" in CANRA as any of the following: a teacher; an instructional aide; a teacher's aide or teacher's assistant employed by any public or private school; a classified employee of any public school; an administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; any 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; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a Head Start program teacher; a licensing worker or licensing evaluator employed by a licensing agency as defined; a public assistance worker; an employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed to represent a minor; a peace officer, as defined, who is not otherwise described in this section; a firefighter, except for volunteer firefighters; 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 as a health care professional as specified; any emergency medical technician I or II, paramedic, or other person certified to provide emergency medical services; a registered psychological assistant; a marriage and family therapist trainee, as defined; a registered unlicensed marriage and family therapist intern; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; a commercial film and photographic print processor, as defined; a child visitation monitor, as defined; an animal control officer or humane society officer, as

defined; a clergy member, as defined; any custodian of records of a clergy member, as specified; any employee of any police department, county sheriff's department, county probation department, or county welfare department; an employee or volunteer of a Court Appointed Special Advocate program, as defined; any custodial officer, as defined; any person providing services to a minor child, as specified; an alcohol and drug counselor, as defined; a clinical counselor trainee, as defined; and a registered clinical counselor intern. (Pen. Code, § 11165.7, subd. (a).)

- 2) Provides that 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. (Pen. Code, § 11166, subd. (h).)
- 3) States that the reporting duties under CANRA are individual and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided they are not inconsistent with CANRA. (Pen. Code, § 11166, subd. (i)(1).)
- 4) Provides that volunteers of public or private organizations, except a volunteer of a Court Appointed Special Advocate program, 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 a specified agency. (Pen. Code, § 11165.7, subd. (b).)
- 5) Strongly encourages employers to provide their employees who are mandated reporters with training in the duties imposed by CANRA. 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 a statement that informs the employee that he or she is a mandated reporter and informs the employee of his or her reporting obligations and of his or her confidentiality rights. (Pen. Code, § 11165.7, subd. (c).)
- 6) Encourages public and private organizations 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. (Pen. Code, § 11165.7, subd. (f).)
- 7) Requires a mandated reporter to make a report to a specified agency 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 to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written follow-up report thereof 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. (Pen. Code, § 11166, subd. (a).)

- 8) Provides that 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 a specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)
- 9) Provides that any supervisor or administrator who interferes or inhibits a mandated reporter from reporting suspected child abuse or neglect 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 imprisonment and a fine. (Pen. Code, § 11166.01, subd. (a).)
- 10) Defines "child" under CANRA to mean person under the age of 18 years. (Pen. Code, § 11165.)
- 11) Defines "child abuse or neglect" under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury as defined. "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. (Pen. Code, § 11165.6.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "AB 1963 is a commonsense measure in this era of 'Times Up' and 'Me Too,' to designate human resource employees of any business which employs minors and those supervisors whose duties require direct contact and supervision of minors in the workplace as mandated reporters and direct them to the existing free training in the duties of mandated reporters.

"California has millions of minors who are in the workforce. Sadly, the workplace is also an environment where sexual harassment and other forms of employee abuse can take place. As noted in the 2017 Report of the Co-Chairs of the Equal Employment Opportunity Commission (EEOC) Select Task Force on the Study of Harassment in the Workplace, almost one third of the approximately 90,000 charges received by EEOC in fiscal year 2015 included an allegation of workplace harassment. In addition, the report noted a series of factors that put employees at a higher risk of experiencing harassment in the workplace, including a young workforce.

"When the employee is a minor, the same conduct that violates an employer's sexual harassment policies may also be child abuse, which must be immediately reported to

authorities for investigation. Unlike the children who report child abuse in a school setting for instance, where teachers, administrators and other employees are trained mandated reporters, the sexual harassment prevention training mandated for children who are employees is governed under the Government Code provisions for employment protections, which sends any sexual harassment complaints to the Human Resources Department, and to the Department of Fair Employment and Housing, where a lengthy legal process is available. AB 1963 is needed to assure that when a report of sexual harassment in the workplace is brought forward by a minor or on behalf of a minor, the complaint will be made to a trained mandated reporter so that all of their rights under law will be protected.”

- 2) **Prior Legislation:** AB 189 (Kamlager-Dove), Chapter 674, Statutes of 2019, provided that a certified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional provided, as defined, is a mandated reporter of known or suspected child abuse for the purpose of CANRA.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None

##### **Opposition**

None

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744