STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF PSYCHOLOGY – Administration
1625 N. Market Blvd., N-215, Sacramento, CA 95834
P (916) 574-7720 F (916) 574-8671 www.psychology.ca.gov

MEMORANDUM

DATE	April 17, 2015
TO	Policy and Advocacy Committee Members
FROM	Jonathan Burke Administrative Services Coordinator
SUBJECT	**AB 832 (Garcia) – Child Abuse: Reportable Conduct**

Background:

Please see attached analysis for detail on the proposed legislation.

Action Requested:

The staff recommendation is to continue a "support if amended" position on AB 832 (Garcia).

Attachment A is the staff analysis of AB 832.
Attachment B is the language of the bill.
Attachment C is the Board's letter communicating the "oppose unless amended" to AB 1505 (Garcia)

California LEGISLATIVE INFORMATION

AB-832 Child abuse: reportable conduct. (2015-2016)

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL **No. 832**

Introduced by Assembly Member Cristina Garcia

February 26, 2015

An act to amend Section 11165.1 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 832, as introduced, Cristina Garcia. Child abuse: reportable conduct.

The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, 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. Existing law provides that "child abuse or neglect" for these purposes includes "sexual assault," that includes, among other things, the crimes of sodomy, oral copulation, and sexual penetration.

This bill would provide that "sexual assault" for these purposes does not include consensual sodomy, oral copulation, or sexual penetration, unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11165.1 of the Penal Code is amended to read:

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). *"Sexual assault" for the purposes of this article does not include consensual conduct in violation of Section 286, 288a, or 289, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.*

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

(1) 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) Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Intrusion by one person into the genitals or anal opening of another person, including the use of an 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) A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a 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) A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, 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.

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Board of Psychology
1625 North Market Blvd., Suite N215, Sacramento, CA 95834
P 916-574-7720 F 916-574-8672 | www.psychology.ca.gov

May 22, 2014

The Honorable Cristina Garcia
California State Assembly
State Capitol, Room 5164
Sacramento, CA 95814

RE: AB 1505 – **Oppose Unless Amended**

Dear Assembly Member Garcia:

The Board of Psychology (Board) has taken an "oppose unless amended" position on AB 1505.

The Board is concerned that the most recent version of the bill does not resolve the lack of clarity in current law as effectively as the previous version of the bill did. The previous version of the bill would have clarified for mandated reporters that consensual sodomy or oral copulation among two minors, including those under age 16, is not reportable as sexual assault under the Child Abuse and Neglect Reporting Act (CANRA).

The current version of the bill still clarifies that consensual sodomy or oral copulation among two 16 or 17 year olds, is not reportable as sexual assault under CANRA. However, the current version of the bill actually codifies that consensual sodomy or oral copulation among two minors under 16, (for example, two 14 or 15-year olds, or a 16 and 15 year old) is a mandated report of sexual assault under CANRA. This is in conflict with existing case law and a recent DCA legal opinion conducted by the Board of Behavioral Sciences.

The Board's desire is that a psychologist be allowed to determine if sodomy or oral copulation among two individuals, of like age is abusive and reportable or non-abusive and non-reportable. The current version of the bill does not accomplish said objective. The initial version of the Bill was clearer in fulfilling the intent of the Board in clearing up the mandated reporting requirements of CANRA.

If you would like to discuss the Board's position, please feel free to contact the Board's Administrative Coordinator, Jonathan Burke, at (916) 574-7137.

Sincerely,

NICOLE J. JONES
Chair, Policy and Advocacy Committee
Board of Psychology

cc:
Board Members
Tracy Rhine, Deputy Director, Legislative and Policy Review, Department of Consumer Affairs