



MEMORANDUM

DATE	June 13, 2014
TO	Psychology Board Members
FROM	 Jonathan Burke Administrative Services Coordinator
SUBJECT	AB 1505 (Garcia): Child Abuse: Mandated Reporters

Background:

On May 16, 2014, the Board of Psychology took an oppose position on AB 1505. The bill has been withdrawn by the author and is not moving forward.

Please see attached analysis for detail on this proposed legislation.

Action Requested:

This item is for informational purposes as there have been no substantive changes to the bill. No action is required.

Attachment A is the staff analysis of AB 1505.

Attachment B shows the current language proposed in AB 1505.

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 1505

VERSION: AMENDED APRIL 24, 2014

AUTHOR: GARCIA

SPONSOR: AUTHOR

RECOMMENDED POSITION: OPPOSE UNLESS AMENDED

SUBJECT: CHILD ABUSE: MANDATED REPORTERS

Existing Law:

1) CANRA, Penal Code section 11164 et seq., requires certain enumerated mandated reporters, including psychologists and registered psychological assistants, to report to appropriate authorities suspected child abuse or neglect. "Child abuse" includes sexual abuse as defined in Penal Code section 11165.1, and includes certain acts of sodomy (Penal Code section 286) and oral copulation (Penal Code section 288a), and certain lewd and lascivious acts (Penal Code section 288).

2) Since 1986, the law has been clear that reporters are not required to report consensual sexual intercourse between minors under age 14 as sexual abuse under Penal Code section 288 in the absence of any other signs of abuse. (See *Planned Parenthood Affiliates of California et al., v. John K. Van de Kamp* (1986) 181 Cal.App.3d 245.) Historically, however, the Board of Psychology, as well as several other healing arts boards, has acknowledged different reporting requirements for acts of sodomy and oral copulation between minors than for other sexual acts, like sexual intercourse, that has been discussed and outlined in secondary source materials for psychologists to assist psychologists' compliance with the law. Specifically, according to these long-standing sources, practitioners do not have to report their knowledge of non-abusive consensual sexual conduct between minors of a like age to authorities except in instances when acts of sodomy or oral copulation have occurred.

This Bill:

1) This bill would instead make instances of sodomy or oral copulation with a minor reportable as sexual abuse only if the conduct involves either a person over 21 years of age or a minor under 16 years of age.

Comments:

1) **Author's Intent.** Current reporting requirements for mandated reporters of child abuse are confusing and inconsistent. Mandated reporting requirements vary depending on the type of sexual act (Penile/Vaginal intercourse, Oral or Anal) and ages

of those involved. Currently consensual oral and anal sex is illegal with anyone under the age of 18, and constitutes a mandated report. In the case of prosecution, authorities are required to designate a victim and a perpetrator even where the sexual act is consensual. Simpler reporting requirements would ensure that reporters are more confident and knowledgeable about what needs to be reported, and result in increased safety for our youth. AB 1505 would categorize consensual Anal and Oral sex the same as consensual Penile and Vaginal sex amongst people 16 to 21.

2) Current Reporting Requirements. Historically, several healing arts boards, including the Board of Psychology, have interpreted CANRA to place a distinction between acts of sodomy and oral copulation and other sexual acts. Specifically, practitioners do not have to report their knowledge of non-abusive consensual sexual conduct between minors of a like age to authorities except in instances when acts of sodomy or oral copulation have occurred. Further, this historical interpretation of CANRA is included in education materials to ensure psychologists comply with the law.

3) Recommended Position: Oppose unless amended.

4) Support and Opposition.

Support:

- American Association of Marriage and Family Therapists*

Opposition:

- None at this time.

5) History

2014

May 21	In ASSEMBLY Committee on APPROPRIATIONS: Not heard.
May 14	In ASSEMBLY Committee on APPROPRIATIONS: Not heard.
May 7	In ASSEMBLY Committee on APPROPRIATIONS: Not heard.
Apr. 24	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
Mar. 24	Re-referred to Com. on PUB. S.
Mar. 20	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
Mar. 20	Referred to Com. on PUB. S.
Jan. 15	From printer. May be heard in committee February 14.
Jan. 14	Read first time. To print.

*Letter of support sent before amendments of 4/24/14. AMFT may reconsider their support.

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1505

Introduced by Assembly Member Garcia

January 14, 2014

An act to amend Section 11165.1 of the Penal Code, relating to mandated reporters.

LEGISLATIVE COUNSEL'S DIGEST

AB 1505, as amended, Garcia. Child abuse: mandated reporters.

Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, 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, including sexual abuse.

Under existing law, sexual abuse is reportable if it involves unlawful sexual intercourse between a person 21 years of age or older with a minor who is under 16 years of age. Existing law makes sexual abuse reportable if any person participates in an act of sodomy or oral copulation with a person who is under 18 years of age.

This bill would instead make instances of sodomy or oral copulation *with a minor* reportable as sexual abuse only if ~~any person over 21 years of age participates in an act of sodomy or oral copulation with a person who is under 16 years of age~~ *the conduct involves either a person over 21 years of age or a minor under 16 years of age.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 11165.1 of the Penal Code is amended
2 to read:
3 11165.1. As used in this article, “sexual abuse” means sexual
4 assault or sexual exploitation as defined by the following:
5 (a) (1) Except as specified in paragraph (2), “sexual assault”
6 means conduct in violation of one or more of the following
7 sections: Section 261 (rape), subdivision (d) of Section 261.5
8 (statutory rape), 264.1 (rape in concert), 285 (incest), 286
9 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision
10 (c) of Section 288 (lewd or lascivious acts upon a child), 288a
11 (oral copulation), 289 (sexual penetration), or 647.6 (child
12 molestation).
13 (2) For purposes of this article, “sexual assault” does not include
14 conduct in violation of the following:
15 (A) Paragraph (1) of subdivision (b) of Section 286 unless it
16 ~~meets the criteria specified in paragraph (2) of subdivision (b) of~~
17 ~~Section 286 involves either a person over 21 years of age or a~~
18 ~~minor under 16 years of age.~~
19 (B) Paragraph (1) of subdivision (b) of Section 288a unless it
20 ~~satisfies the criteria specified in paragraph (2) of subdivision (b)~~
21 ~~of Section 288a involves either a person over 21 years of age or~~
22 ~~a minor under 16 years of age.~~
23 (b) Conduct described as “sexual assault” includes, but is not
24 limited to, all of the following:
25 (1) Penetration, however slight, of the vagina or anal opening
26 of one person by the penis of another person, whether or not there
27 is the emission of semen.
28 (2) Sexual contact between the genitals or anal opening of one
29 person and the mouth or tongue of another person.
30 (3) Intrusion by one person into the genitals or anal opening of
31 another person, including the use of an object for this purpose,
32 except that, it does not include acts performed for a valid medical
33 purpose.
34 (4) The intentional touching of the genitals or intimate parts,
35 including the breasts, genital area, groin, inner thighs, and buttocks,

1 or the clothing covering them, of a child, or of the perpetrator by
2 a child, for purposes of sexual arousal or gratification, except that,
3 it does not include acts which may reasonably be construed to be
4 normal caretaker responsibilities; interactions with, or
5 demonstrations of affection for, the child; or acts performed for a
6 valid medical purpose.

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

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

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

14 (2) A person who knowingly promotes, aids, or assists, employs,
15 uses, persuades, induces, or coerces a child, or a person responsible
16 for a child’s welfare, who knowingly permits or encourages a child
17 to engage in, or assist others to engage in, prostitution or a live
18 performance involving obscene sexual conduct, or to either pose
19 or model alone or with others for purposes of preparing a film,
20 photograph, negative, slide, drawing, painting, or other pictorial
21 depiction, involving obscene sexual conduct. For the purpose of
22 this section, “person responsible for a child’s welfare” means a
23 parent, guardian, foster parent, or a licensed administrator or
24 employee of a public or private residential home, residential school,
25 or other residential institution.

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



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,

A handwritten signature in black ink, appearing to read "Nicole J. Jones".

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