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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 2302                      **Hearing Date:** June 19, 2018  
**Author:** Baker  
**Version:** March 15, 2018  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SJ

**Subject:** *Child Abuse: Sexual Assault: Mandated Reporters*

### HISTORY

Source: Author

Prior Legislation: None

Support: California District Attorneys Association; California Statewide Law Enforcement Association; The Child Abuse Prevention Center; The Child Abuse Prevention Council of Contra Costa County; Consumer Attorneys of California; Crime Victims United of California; Moraga Police Department; Stop Educator Sexual Abuse, Misconduct and Exploitation

Opposition: ACLU of California

Assembly Floor Vote: 71 - 0

### PURPOSE

*The purpose of this bill is to make the failure to report known sexual assault by a mandated reporter a continuing offense.*

*Existing law* provides that prosecution for an offense not punishable by death or imprisonment in the state prison or pursuant to Section 1170 (h) shall be commenced within one year after commission of the offense. (Pen. Code, § 802, subd. (a).)

*Existing law* provides that a prosecution for an offense is commenced when an indictment or information is filed, a complaint is filed charging a misdemeanor or infraction, the defendant is arraigned on a complaint that charges the defendant with a felony, an arrest warrant or bench warrant is issued. (Pen. Code, § 804.)

*Existing law* establishes the Child Abuse and Neglect Reporting Act and states that the intent and purpose of the Act is to protect children from abuse and neglect. (Pen. Code, § 11164.)

*Existing law* defines “child” as a person under the age of 18 years. (Pen. Code, § 11165.)

*Existing law* provides that “sexual abuse” means sexual assault or sexual exploitation, as defined. (Pen. Code, § 11165.1.)

*Existing law* defines “sexual assault” as conduct in violation of one or more of the following: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), Section 288a (oral copulation), Section 289 (sexual penetration), or Section 647.6 (child molestation). (Pen. Code, § 11165.1, subd. (a).)

*Existing law* provides that 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. (Pen. Code, § 11165.1, subd. (b).)

*Existing law* provides that the term “abuse or neglect in out-of-home care” includes sexual abuse, 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. (Pen. Code, § 11165.5.)

*Existing law* provides that the term “child abuse or neglect” includes sexual abuse. (Pen. Code, § 11165.6.)

*Existing law* defines the occupations that are mandated reporters which includes but is not limited to teachers, athletic coaches, social workers, peace officers, firefighters, physicians, psychologists, psychiatrists, emergency medical technicians, licensed family therapists, child visitation monitors, and clergy members. (Pen. Code, § 11165.7, subd. (a).)

*Existing law* provides that employers of mandated employees are strongly encouraged to provide training in the duties in child abuse and neglect identification and training in child abuse and neglect reporting. Requires employers to provide their employees who are mandated reporters a statement of their duty to report whether or not employers provide their employees with training in child abuse and neglect identification and reporting. (Pen. Code, § 11165.7, subd. (c).)

*Existing law* requires school districts, county offices of education, state special schools and diagnostic centers operated by the State Department of Education, and charter schools to annually train their employees on the duties of mandated reporters. (Pen. Code, § 11165.7, subd. (d).)

*Existing law* provides that, beginning on January 1, 2018, a child care licensee applicant is required to take mandatory reporting training as a condition of licensure, and a child care administrator or an employee of a licensed child day care facility is required to take training in the duties of mandated reporters during the first 90 days of employment. (Pen. Code, § 11165.7, subd. (e).)

*Existing law* provides that the absence of training does not excuse a mandated reporter from the required reporting duties. (Pen. Code, § 11165.7, subd. (f).)

*Existing law* requires that reports of suspected child abuse or neglect be made by mandated reporters, to any police department or sheriff's department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. (Pen. Code, § 11165.9.)

*Existing law* requires a mandated reporter to make a report 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. Requires the mandated reporter to make an initial report by telephone to the agency immediately or as soon as is practicably possible, and to prepare and send, fax, or electronically transmit a written follow up report within 36 hours of receiving the information concerning the incident. Provides that 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).)

*Existing law* provides that, if, after reasonable efforts, a mandated reporter is unable to submit an initial report by telephone, the mandated reporter must immediately or as soon as is practicably possible, by fax or electronic transmission, make a written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone follow up call with the agency with which the report is filed. (Pen. Code, § 11166, subd. (b).)

*Existing law* provides that reports of suspected child abuse or neglect must 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. Requires, if a report is made, the following information, if known, to 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. Requires the mandated reporter to make a report even if some of this information is not known or is uncertain. (Pen. Code, § 11167.)

*Existing law* provides that a mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor punishable by up to six months in a county jail or by a fine of \$1,000, or both. Provides that 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, the failure to report is a continuing offense until an agency discovers the offense. (Pen. Code, § 11166, subd. (c).)

*Existing law* defines "reasonable suspicion" to mean 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. Provides that 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. (Pen. Code, § 11166, subd. (a)(1).)

*Existing law* provides that any supervisor or administrator, who impedes others from making a report, shall be punished by not more than six months in a county jail or by a fine of not more than \$1,000, or both. (Pen. Code, § 11166.01, subd. (a).)

*Existing law* provides that a mandated reporter who willfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect, 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 or by a fine of not more than \$5,000, or both. (Pen. Code, § 11166.01, subd. (b).)

*This bill* makes the failure to report an incident known to be sexual assault by a mandated reporter a continuing offense until an agency, as specified, discovers the offense.

## COMMENTS

### 1. Need for This Bill

According to the author:

Current law does not include failure to report sexual assault of a child as a continuing offense. By the time the sexual abuse of a child is discovered, the mandated reporter may no longer be prosecuted for failing to report sexual abuse of a child, since the one year statute of limitation began when the failure to report occurred, nor when law enforcement learned of the failure to report.

### 2. Continuing Offenses

Criminal statutes of limitations serve a number of policy interests. As stated by the U.S. Supreme Court:

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity. (*Toussie v. United States* (1970) 397 U.S. 112, pp. 114-15.)

A continuous offense is one that is “marked by a continuing duty in the defendant to do an act which he fails to do. The offense continues as long as the duty persists and there is a failure to perform that duty.” (*Wright v. Superior Court* (1997) 15 Cal.4th 521, 526 (holding that the failure of a sex offender to give the required notification of an address change is a continuing

offense).) In recognizing the inherent tension between the purpose of a statute of limitations and the continuing offense doctrine, the U.S. Supreme Court observed that “the doctrine of continuing offenses should be applied in only limited circumstances.” (*Toussie*, supra, 397 U.S. at p. 115.)

As a general rule, the statute of limitation for misdemeanor offenses in California is one year, and prosecution of the offense must be commenced within that time. (Pen. Code, § 802, subd. (a).) Current law provides that the failure of a mandated reporter to report abuse or neglect is a misdemeanor. (Pen. Code, § 11166, subd. (c).) Current law also provides that 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, the failure to report is a continuing offense. (*Id.*) For this offense, the one year statute of limitation begins to run upon the date an agency discovers the failure to report.

This bill would make the failure to report an incident known to be sexual assault by a mandated reporter a continuing offense. This would extend the statute of limitation to allow a prosecutor to charge a person for failing to report an incident of sexual assault, until a year after an agency discovers the failure to report, even if the person did not conceal his or her failure to report.

### 3. Argument in Support

According to Stop Educator Sexual Abuse, Misconduct and Exploitation:

A “mandated reporter” is someone who has to report suspected child abuse or neglect to law enforcement. A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of \$1000 or both imprisonment and a fine. The statute of limitation for failing to report is one year starting when the mandated reporter failed to report the suspected abuse or neglect.

Current law does not include failure to report suspected child abuse or neglect of a child as a continuing offense. By the time the child abuse or neglect of a child is discovered, the mandated reporter may no longer be prosecuted for failing to report suspected abuse or neglect of a child, since the one year statute of limitation began when the failure to report occurred, not when law enforcement learned of the failure to report.

AB 2302 would include the failure to report suspected child abuse or neglect as a continuing offense for mandated reporters. So the one-year statute of limitations would not begin until law enforcement or child welfare agencies learn of the mandated reporter’s failure to report. This bill helps ensure any mandated reporter who fails to report suspected abuse or neglect of a child can be held accountable for failing to report and protect that child.

#### 4. Argument in Opposition

The ACLU of California writes:

Statutes of limitations serve important practical purposes as well as protecting individuals from injustice. As time passes following the alleged commission of an offense, physical and documentary evidence may be lost and witnesses may die, move away, or otherwise become unavailable. By requiring that a crime be prosecuted within a certain amount of time after its alleged commission, statutes of limitation encourage law enforcement to investigate crimes promptly, and ensure that defendants have access to the evidence they need to defend themselves.

By making failure to report child sexual assault a continuing offense, AB 2302 would allow the prosecution of mandated reporters years or even decades after an alleged failure to report. . . .

Teachers, counselors, social workers, and others in helping professions are the mandated reports who would be threatened by potential prosecution for something that happened long ago under AB 2302. This change may cause some to think twice about going into these professions, knowing that a single alleged omission could lead to prosecution far in the future. Others may try to do their jobs while doing all they can not to learn about reportable abuse – turning away from the needs of the very children mandated reporting is intended to protect.

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