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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 189                      **Hearing Date:** June 18, 2019  
**Author:** Kamlager-Dove  
**Version:** May 7, 2019  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Child Abuse or Neglect: Mandated Reporters: Autism Service Personnel*

### HISTORY

**Source:** California Association for Behavior Analysis

**Prior Legislation:** None

**Support:** American Academy of Pediatrics; Applied Behavior Consultants, Inc.; Association of Regional Center Agencies; The Arc; Autism Speaks; California Association of Marriage and Family Therapists; Center for Autism & Related Disorders; Disability Rights California; Educate. Advocate; Empower Family California; Kaiser Permanente; Los Angeles County Board of Supervisors; Los Angeles County District Attorney's; United Cerebral Palsy California Collaboration

**Opposition:** None known

**Assembly Floor Vote:** 72 - 0

### PURPOSE

*The purpose of this bill is to provide that a qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional provider, as defined, is a mandated reporter of known or suspected child abuse and neglect for the purposes of the Child Abuse and Neglect Reporting Act (CANRA).*

*Existing law* establishes the CANRA and states that the intent and purpose of the Act is to protect children from abuse and neglect. (Penal Code § 11164.)

*Existing law* defines "mandated reporter" under 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. (Penal Code § 11165.7(a).)

*Existing law* 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. (Penal Code, § 11166a (h).)

*Existing law* 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. (Penal Code § 11165.7 (b).)

*Existing law* 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. (Penal Code § 11165.7 (c).)

*Existing law* 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. (Penal Code § 11165.7 (f).)

*Existing law* 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 nonprivileged documentary evidence the mandated reporter possesses relating to the incident. (Penal Code § 11166 (a).)

*Existing law* provides 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. (Penal Code, § 11166 (c).)

*Existing law* defines "child" under CANRA to mean a person under the age of 18 years. (Penal Code § 11165.)

*Existing law* 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. "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. (Penal Code § 11165.6.)

*This bill* provides that a qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional provider, as defined, is a mandated reporter of known or suspected child abuse and neglect for the purposes of the Child Abuse and Neglect Reporting Act (CANRA).

## COMMENTS

### 1. Need for This Bill

According to the author:

California's existing mandated reporter law, the Child Abuse and Neglect Reporting Act (CANRA), does not explicitly require Qualified Autism Service Professionals (QASP) and their employees to report suspected cases of abuse or neglect.

Mandated reporter laws are in place to prevent children, along with at-risk individuals, from being abused and to end any possible abuse or neglect at the earliest possible stage. Further, studies suggest that individuals with developmental disabilities (autism spectrum disorder, intellectual disabilities and emotional disturbances) are at a much higher level risk of abuse than their peers. The providers who regularly work with these individuals are known as Qualified Autism Service Providers (QASP).

QASPs include a variety of provider types, some of whom are licensed and are mandated reporters (physicians, physical therapists, occupational therapists, psychologists, social workers etc.). However, the QASP designation also includes unlicensed providers who meet specified educational and professional or work experience qualifications like Board Certified Behavior Analysts (BCBAs), Board Certified Assistant Behavior Analysts (BCaBAs), Behavior Analysts, Behavior Management Assistants and paraprofessional. These unlicensed providers are not covered by current mandated reporter laws.

Per contractual agreements, unlicensed QASPs may be mandated reporters based upon the nexus of service or funding source. For example, if working in a program funded by a school district or through a state agency, a QASP may be a mandated reporter; but if their services are reimbursed by a health plan or insurance company, they may not be. The lack of statutory clarity causes confusion among the unlicensed providers as to when they have a duty to report.

QASPs, regardless of provider type, serve the same patient population. In the interest of protecting for this vulnerable population, AB 189 clarifies that all QASP provider are mandated reporters.

## **2. Mandated reporters**

Existing law requires a mandated report to report whenever in their professional capacity they have knowledge of or observe a child whom they reasonably suspect to be a victim of child abuse or neglect. Failure to report is a 6 month misdemeanor.

Teachers, teacher's aids, other school employees, medical professionals, social workers and many others are among those that are mandated reporters.

This bill clarifies that a qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional provider, as defined, are a mandated reporters of known or suspected child abuse and neglect for the purposes of the Child Abuse and Neglect Reporting Act (CANRA).