

CHIEF OF DETECTIVES

NOTICE
8.3

January 13, 2021

TO: All Sworn Personnel

FROM: Chief of Detectives

SUBJECT: ASSEMBLY BILL (AB) 1145 – CHILD ABUSE REPORTABLE CONDUCT

PURPOSE: This Notice serves as clarification for AB 1145, which no longer mandates reporting of consensual or voluntary sodomy, oral copulation, or sexual penetration, between persons 20 years of age and younger with a minor 16 years of age and older. This bill only changes mandatory reporting requirements and does not alter the documentation and reporting of violations of Penal Code Section 261.5, as it relates to “Unlawful Sexual Intercourse.”

BACKGROUND: On September 26, 2020, Governor Newsom signed into law AB 1145 – “Child Abuse: Reportable Conduct,” an act to amend Section 11165.1 of the Penal Code, which is to take effect January 1, 2021.

Currently, 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 offenses, the crimes of sodomy, oral copulation, and sexual penetration as outlined in Section 11165.1 of the Penal Code, relating to crimes.

Effective January 1, 2021, this bill provides that “sexual assault” for this purpose, would not include voluntary sodomy, oral copulation, or sexual penetration, if there are no indicators of abuse, 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.

For example: If a high school teacher or counselor knows or suspects one of their 16-year-old students or counselees is having consensual sex with a 20-year-old, they are no longer required to report it.

Although AB 1145 will no longer require mandated reporting when there is an awareness of, or discovery that a person, 20 years of age or younger and a minor, 16 years of age or older who is not a spouse, are engaging in consensual sodomy, oral copulation, or sexual penetration, prosecution may be pursued under Penal Code Section 261.5. This Penal Code, “Unlawful Sexual Intercourse,” commonly referred to as statutory rape or sex with a minor, is still in effect and an adult who is 18 years of age and older, may be found guilty in the State of California of unlawful sexual intercourse as prosecuted under this Penal Code Section.

I. OFFICER'S RESPONSIBILITIES. All sworn personnel who are made aware of the aforementioned scenarios and situations outlined in Penal Code Section 261.5, shall complete an Investigative Report (LAPD Form 03.01.00) titled "Unlawful Sexual Intercourse." This form shall be forwarded to the appropriate investigative area, where it will be thoroughly investigated and submitted to the District Attorney's Office for filing review. When completing these reports, sworn personnel shall ensure that:

- LAPD Form 03.02.00, "Request for Confidentiality of Information Form," has been completed and attached;
- The appropriate information has been cross-reported to the Department of Children and Family Services (DCFS) via the hotline; and,
- A referral number is obtained and documented within the body of the Investigative Report.

NOTE: While AB 1145 no longer mandates reporting in these specified circumstances, the Department will continue to combat child abuse by cross-reporting all incidents to our partners at DCFS.

II. WATCH COMMANDER'S RESPONSIBILITIES. In circumstances when an officer has completed an Investigative Report (LAPD Form 03.01.00), titled "Unlawful Sexual Intercourse," based on the aforementioned laws and criteria, the watch commander shall:

- Confirm that the officers included a confidentiality form and cross-reported the appropriate information to the DCFS, documenting the reference number within the body of the Investigative Report.

III. COMMANDING OFFICER'S RESPONSIBILITY. Area Commanding Officers shall be responsible for compliance with this Notice.

Should you have any questions regarding this Notice, please contact Juvenile Division at (213) 486-0500.



KRIS E. PITCHER, Deputy Chief
Chief of Detectives

APPROVED:



DANIEL RANDOLPH, Commander
Chief of Staff
Office of the Chief of Police

DISTRIBUTION "D"



State of California

PENAL CODE

Section 261.5

261.5. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts

deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(Amended by Stats. 2011, Ch. 15, Sec. 302. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)