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Office of the Attorney General of California

Attn: Toni Melton, Initiative Secretary

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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Re: Submitting amended text for Proposed Initiative

No. 07-0013 - Child Abuse Reporting Enforcement Act of 2008

Dear Initiative Secretary Melton:

On Wednesday, April 18, I submitted the above referenced proposed Constitutional and Statutory initiative File **No. 07-0013** to your office, requesting that you prepare, pursuant to Article II, Section 10(d) of the California Constitution, a title and summary for this ballot initiative as provided by law. I submitted the required, signed statement under California Elections Code section 9608 and payment in the amount of \$200.

I now wish to submit an amended text for this initiative. A copy of the complete text of the initiative including the amendments, as required, is enclosed.

I am submitting these substantive amendments within 15 days following the April 18 receipt by your office of the original text of this initiative.

Thank you for your attention to this matter.

Sincerely,

John Smith

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

The Attorney General of California has prepared the following title and summary of the chief purposes and points of the proposed measure:

(Insert 100 word title and summary)

To the Honorable Secretary of State of California:

We the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose amendments to the Constitution and statutes of the State of California relating to the reporting of sexual abuse of minors and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed amendments read as follows:

SECTION 1. Title

This measure shall be known and may be cited as the Sexual Abuse Reporting Act of 2008.

SECTION 2. Declaration of Findings and Purposes

(a) The People of California have a special and compelling interest in and responsibility for protecting the health and well-being of children.

(b) Sexual abuse of minor children causes grave and lasting physical, emotional, and psychological injuries to the victims, their families, and society.

(c) Victims of child sexual abuse have an increased likelihood of becoming perpetrators of child sexual abuse and thus perpetuating the sexual abuse of minor children.

(d) The continued sexual abuse of a minor child greatly increases the damage to the child and therefore every reasonable effort should be made to report the sexual abuse of a minor child so that prompt actions may be taken to protect the child from further sexual abuse.

(e) Prompt reporting and investigation of reasonable suspicions of child sexual abuse are the first essential steps in protecting not only the abused child from continuing sexual abuse but also in protecting other children from sexual predators.

(f) Unmarried minors under the age of 16 engaging in sexual intercourse or other genital sexual contact creates significant burdens on the state and its public and private health and welfare systems, in that such activity leads to increased incidence of out-of-wedlock pregnancies, with attendant social pathologies, and sexually transmitted diseases, including incurable viral and other infections leading to hepatitis, cervical cancer, Kaposi's sarcoma, genital warts, immune deficiency, pelvic inflammatory disease, and sterility, as well as causing grave pre- and postnatal impairments to the development, health, and welfare of future children of affected minors. These adverse consequences result from sexual intercourse or other genital sexual contact by unmarried minors under the age of 16 whether or not the minor consented, whether or not the sexual partner was of similar age, whether or not the minor appears to have suffered abuse or injury, and whether or not the minor believes he or she has been abused or injured.

SECTION 3. Section 32 of Article I of the California Constitution is added to read:

SEC. 32: This Constitution shall not be construed by the courts to prohibit requiring any mandated reporter, including any person who is licensed or certified by the state to provide health care, from reporting a reasonable suspicion of child abuse based solely on a diagnosis of sexually transmitted infection, pregnancy, miscarriage, or complications of pregnancy, abortion, or miscarriage in a child under the age of 16.

SECTION 4. Section 11166 of the Penal Code is amended to read:

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 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 followup 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.

(1) For the purposes of this article, "reasonable suspicion" means that 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. ~~For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.~~ *A diagnosis of sexually transmitted infection, pregnancy, miscarriage, or complications of pregnancy, abortion, or miscarriage in a minor under the age of 16 constitutes, in and of itself, a reasonable suspicion of sexual abuse.*

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated onetime reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) 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 an agency specified in Section 11165.9 discovers the offense.

(d)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3)(A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that

the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(4) (A) A mandated reporter who is making a report of a reasonable suspicion of sexual abuse based solely on a diagnosis of sexually transmitted infection, pregnancy, miscarriage, or complications of pregnancy, abortion, or miscarriage shall include in the followup report or the one-time automated written report a statement as to whether or not the mandated reporter, in the exercise of professional judgment, believes that sexual abuse as defined in section 11165.1 has occurred and providing the basis for that belief, or stating that the reporter has not formed a belief. This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(B) The mandated reporter shall ensure that any physical evidence relevant to the identification and/or prosecution of the perpetrator of the abuse is preserved and made available to law enforcement for a period of one year.

(C) No claim shall be paid by the Medi-Cal program or any other program paid for or subsidized by the State of California for any medical services relating to treatment of sexually transmitted infection, pregnancy, miscarriage, or complications of pregnancy, abortion, or miscarriage, or provision of abortion, in a minor under the age of 16 unless the claim for payment is accompanied by proof of compliance with the reporting requirements of this section.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of

suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone and shall prepare and send, fax, or electronically transmit a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(h) 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.

(i)(1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the

minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(1) (1) Every person or entity who owns or operates a health facility or a clinic where sexual or reproductive health services are provided to minors, or who is licensed as a physician and surgeon and rents or owns the premises where his or her practice is located and who provides sexual or reproductive health services to minors on such premises, shall cause a sign or notice to be posted at the patient registration area of the health facility, clinic, or physician and surgeon's office.

(2) The sign or notice shall read as follows: "WARNING: It is a crime to prevent or dissuade a minor who may be a victim of sexual abuse from providing accurate information, including the age of the victim or perpetrator, to a mandated reporter in connection with such victimization."

(3) The sign shall be not less than eight and one-half inches by 11 inches and shall be conspicuously displayed so as to be readable. The word "WARNING" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The message on the sign shall appear in English and Spanish.

SECTION 5. Section 136.1 of the Penal Code is amended to read:

(a) Except as provided in subdivision (c), any person who does any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(3) For purposes of this section, evidence that the defendant was a family member who interceded in an effort to protect the witness or victim shall create a presumption that the act was without malice.

(b) Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

(2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with that victimization.

(4) Providing accurate information, including the age of the victim or perpetrator, to a mandated reporter under section 11165.7 in connection with such victimization arising from sexual abuse as defined in section 11165.1.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:

(1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person.

(2) Where the act is in furtherance of a conspiracy.

(3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section.

(4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony.

(d) Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of the attempt. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.

(e) Nothing in this section precludes the imposition of an enhancement for great bodily injury where the injury inflicted is significant or substantial.

(f) The use of force during the commission of any offense described in subdivision (c) shall be considered a circumstance in aggravation of the crime in imposing a term of imprisonment under subdivision (b) of Section 1170.

SECTION 6. Severability

If any one or more provision, subdivision, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase or word of this act would have been approved by voters irrespective of the fact that any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.