
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1544 **Hearing Date:** July 11, 2023
Author: Lackey
Version: May 18, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Child Abuse Central Index*

HISTORY

Source: Author

Prior Legislation: AB 1450 (Lackey), failed Sen. Public Safety Comm., 2020
AB 2005 (Santiago), 2018, vetoed
AB 1707 (Ammiano), Ch. 848, Stats. 2012
AB 717 (Ammiano), Ch. 468, Stats. 2011
AB 2442 (Keeley), Ch. 1064, Stats. 2002
AB 1447 (Granlund), never heard in Sen. Judiciary Comm., 2000

Support: Los Angeles County District Attorney's Office; Los Angeles County Sheriff's Department

Opposition: ACLU California Action; California Public Defenders Association (oppose unless amended); Dependency Legal Services; Los Angeles Dependency Lawyers, Inc.; Public Counsel; Root & Rebound

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to authorize a police or sheriff's department receiving a report of known or suspected child abuse or severe neglect, made on or after January 1, 2024, to forward to the Department of Justice (DOJ) a report in writing of its investigation that is determined to be substantiated for inclusion in the Child Abuse Central Index (CACI)

Existing law requires mandated reporters to make reports of suspected child abuse or neglect to any police department or sheriff's department, not including a school district police or security 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 that any specified mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment whom the reporter knows, or reasonably suspects, has been the victim of child abuse, to report it immediately to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to

receive mandated reports, or the county welfare department. (Pen. Code, § 11166, subd. (a).)

Existing law requires specified local agencies to send the DOJ reports of every case of child abuse or severe neglect that they investigate and determine to be substantiated. (Penal Code, § 11169, subd. (a).)

Existing law defines “substantiated” as “a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect ... based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred. A substantiated report shall not include a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse or neglect.” (Pen. Code, § 11165.12, subd. (b).)

Existing law directs the DOJ to maintain an index, referred to as the CACI, of all substantiated reports of child abuse and neglect submitted as specified. (Pen. Code § 11170, subs. (a)(1) and (a)(3).)

Existing law allows DOJ to disclose information contained in the CACI to multiple identified parties for purposes of child abuse investigation, licensing, and employment applications for positions that have interaction with children. (Pen. Code, § 11170, subd. (b).)

Existing law requires reporting agencies to provide written notification to a person reported to the CACI. (Pen. Code, § 11169, subd. (c).)

Existing law provide that, except in those cases where a court has determined that suspected child abuse or neglect has occurred or a case is currently pending before the court, any person listed in the CACI has the right to hearing which comports with due process before the agency that requested the person's CACI inclusion. (Pen. Code, § 11169, subs. (d) and (e).)

Existing law requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

Existing law requires the DOJ to remove a person's name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

Existing law provides that any person listed in CACI who has reached age 100 is to be removed from CACI. (Pen. Code, § 11169, subd. (f).)

Existing law provides that any non-reoffending minor who is listed in CACI shall be removed after 10 years. (Pen. Code, § 11169, subd. (g).)

Existing law, as of January 1, 2012, prohibits a police or sheriff's department from forwarding to DOJ for inclusion in the CACI a report of any case it investigates of known or suspected child abuse or severe neglect. (Pen. Code, § 11169, subd. (b).)

This bill repeals the provision in existing law that prohibits law enforcement from forwarding reports of abuse and neglect to the DOJ for inclusion in the CACI, and instead authorizes a

police or sheriff's department to forward to DOJ a report of its investigation of known or suspected child abuse or severe neglect that is determined to be substantiated.

This bill specifies that law enforcement can only forward reports of known or suspected child abuse or severe neglect made on or after January 1, 2024.

This bill states that if a previously filed report subsequently proves to be not substantiated, DOJ shall be notified in writing of that fact and shall not retain the report.

This bill requires a law enforcement department that chooses to forward reports of known or suspected abuse and neglect to DOJ for inclusion in CACI to adopt notification and grievance procedures that, at a minimum, include all of the following requirements:

- Within 5 business days of submitting a person's name to DOJ for listing on CACI, the entity shall send a notice of the CACI listing, a description of the grievance procedures for challenging a listing on CACI, and a form to request a grievance hearing, including a referral number for the person's case to the person's last known address; and,
- The notice of the CACI listing shall contain notice that the entity has completed an investigation of suspected child abuse or severe neglect, which the entity has determined to be substantiated, and that the entity has submitted the person's name to DOJ for listing on CACI and the victim's name along with a brief description of the alleged abuse or severe neglect, and the date and location where the abuse or neglect occurred.

This bill requires DOJ to create a grievance procedure for reports of known or suspected child abuse on CACI that were submitted by law enforcement agencies that, at minimum, include all of the following requirements:

- A person who requests a grievance hearing shall, within 30 calendar days of the date of notice of the CACI listing, send by mail, fax, or electronic mail, or deliver in person to DOJ, a signed and completed request for grievance hearing form that includes all of the required information contained on the form. Failure to send the completed request for grievance hearing form within the required time period constitutes a waiver of the right to a grievance hearing;
- A completed request for grievance hearing form shall include the referral number, name of the entity that investigated the abuse or neglect, the person's contact information and date of birth, the reason for grievance, and contact information for the person's attorney or representative, if any;
- A grievance hearing shall be scheduled within 10 business days, and shall be held no later than 60 calendar days, after the date the request for a grievance hearing is received by the department, unless otherwise agreed to by the person requesting the hearing and the entity that forwarded the report;
- Notice of the date, time, and place of the grievance hearing shall be mailed by DOJ to the person requesting the hearing at least 30 calendar days before the grievance hearing is scheduled, unless otherwise agreed to by the person and the entity that forwarded the report;

- The person requesting the hearing may have an attorney or other representative present at the hearing to assist the person;
- Either party may request a continuance of the grievance hearing not to exceed 10 business days. Additional continuances or dismissal of the grievance hearing shall be granted with mutual agreement of both parties involved or for good cause;
- The entity that forwarded the report may resolve a grievance hearing at any point by changing a finding of substantiated child abuse or severe neglect to a finding of not substantiated and notifying DOJ of the need to remove the person's name from the CACI.
- The person requesting the grievance hearing, or the person's attorney or representative, if any, and the entity that forwarded the report shall be permitted, at least 10 days prior to the hearing, to examine all records and relevant evidence that is not otherwise made confidential by law, that the opposing party intends to introduce at the grievance hearing;
- DOJ shall redact names and personal identifiers from the records and other evidence as required by law and to protect the identity and health and safety of a mandated reporter. DOJ may also redact information regarding a mandated reporter's observations of the evidence indicating child abuse or severe neglect, if necessary to protect the identity and health and safety of the mandated reporter;
- The entity that forwarded the report shall release disclosable information to the person's attorney or representative only if the person has provided the entity that forwarded the report with a signed consent to do so;
- The person requesting the hearing and the entity that forwarded the report shall exchange witness lists at least 10 days in advance of the grievance hearing.;
- Failure to disclose evidence or witness lists in advance of the grievance hearing may constitute grounds for the opposing party to object to consideration of the evidence or to object to allowing testimony of a witness during the hearing;
- Each party and their attorney or representative, and witnesses while testifying, shall be the only persons authorized to be present during the grievance hearing unless both parties and the department consent to the presence of other persons;
- All testimony given during the grievance hearing shall be given under oath or affirmation;
- Each party may call witnesses to the hearing and may question witnesses called by the other party. DOJ may limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression, or harassment;
- DOJ may permit the testimony or presence of a child at a hearing only if the child's participation in the grievance hearing is voluntary and the child is capable of providing voluntary consent;
- DOJ may prevent the presence or examination of a child at a grievance hearing for good cause, including, but not limited to, protecting the child from trauma or to protect the child's health, safety, or well-being;

- DOJ may interview a child outside the presence of the parties in order to determine whether the participation of the child is voluntary or whether good cause exists for preventing the child from being present or testifying at the grievance hearing;
- The officer or employee of the entity who conducted the investigation that is the subject of the grievance hearing shall be present at the hearing if the officer or employee is available to participate in the grievance hearing;
- At the hearing, the entity that forwarded the report shall first present its evidence supporting its actions or findings that are the subject of the grievance. The person who requested the grievance hearing may then provide evidence supporting the person's claim that the entity's decision should be withdrawn or changed. The entity shall then be allowed to present rebuttal evidence in further support of its finding. Thereafter, DOJ may, at DOJ's discretion, allow the parties to submit any additional evidence as may be warranted to fully evaluate the matter under review;
- DOJ shall have the proceedings of the grievance review hearing audio recorded as part of the official administrative record and shall maintain the administrative record of the hearing.
- DOJ shall keep possession of the recording and transcript, and its contents shall remain under seal, except that the person who requested the grievance hearing or the person's attorney or representative shall be entitled to inspect the recording and any related transcripts;
- If the person who requested the grievance hearing seeks to inspect the transcript, the cost for transcribing a recording of the hearing shall be assessed to that person;
- DOJ shall file the administrative record with the court if any party seeks judicial review of the final decision of the department in the grievance process;
- At the conclusion of the grievance hearing, DOJ shall make a determination based on the evidence presented at the grievance hearing, whether the allegation of child abuse or severe neglect is unfounded, substantiated, or inconclusive, as defined;
- DOJ shall render a written decision within 30 calendar days of the completion of the grievance hearing. The written decision shall contain a summary statement of the facts, the issues involved, findings, and the basis for the decision;
- A copy of the decision shall be sent to the person who requested the grievance hearing and the person's attorney or representative, if any;
- If the person who requested the grievance hearing chooses to challenge the written determination, the evidence and information disclosed at the grievance hearing may be part of an administrative record for a writ of mandate and shall be kept confidential;
- The grievance hearing administrative record shall be kept confidential, including if any of the parties request that it be filed with the court under seal;
- The grievance hearing administrative record shall be retained for a length of time consistent with current law, regulations, or judicial order that governs the retention of the underlying

record, but not less than one year from the decision date in any circumstance, and shall include all records accepted into evidence at the hearing; and,

- DOJ shall bill the entity that forwarded the report for expenses for the hearing.

COMMENTS

1. Need for This Bill

According to the author of this bill:

The Child Abuse Central Index was originally developed to assist investigators with determinations for whether immediate action needed to be taken in potentially dangerous situations for our youth. CACI has been plagued with issues affecting the lives of vulnerable communities throughout its development. It is the role of the legislature to address these concerns and reform the system to better serve children.

In my district, we have experienced an abnormally high number of catastrophic incidents where children have died of abuse that has been deemed torture despite reports to both law enforcement and social services. We need to make substantive policy changes to the systems that ensure child protection to better coordinate the response. This starts with improving the information available to decision makers that will allow them to save vulnerable children before it is too late. My bill aims to improve the available data while ensuring strength-based respect for all communities.

2. Background on CACI

CACI was created in 1965 as a centralized system for collecting reports of suspected child abuse. This is not an index of persons who necessarily have been convicted of any crime; it is an index of persons against whom reports of child abuse or neglect have been made, investigated, and determined by the reporting agency (local welfare departments and law enforcement) to meet the requirements for inclusion, according to standards that have changed over the years.

Access to CACI initially was limited to official investigations of open child abuse cases, but in 1986 the Legislature expanded access to allow the Department of Social Services (DSS) to use the information for conducting background checks on applications for licenses, adoptions, and employment in child care and related services positions.

DOJ provides the following summary of CACI on its website:

The Attorney General administers the Child Abuse Central Index (CACI), which was created by the Legislature in 1965 as a tool for state and local agencies to help protect the health and safety of California's children. Defined in Penal Code sections 11164 through 11174.31, these statutes are referred to as the "Child Abuse and Neglect Reporting Act" or "CANRA".

Investigated reports of child abuse are forwarded to the CACI. These reports contain information related to substantiated cases of physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child.

The information in the CACI is available to aid law enforcement investigations, prosecutions, and to provide notification of new child abuse investigation reports involving the same suspects and/or victims. Information also is provided to designated social welfare agencies to help screen applicants for licensing or employment in child care facilities and foster homes, and to aid in background checks for other possible child placements, and adoptions. Dissemination of CACI information is restricted and controlled by statute

Information on file in the Child Abuse Central Index include:

- 1) Names and personal descriptors of the suspects and victims listed on reports;
- 2) Reporting agency that investigated the incident;
- 3) The name and/or number assigned to the case by the investigating agency; and
- 4) Type(s) of abuse investigated

It is important to note that the effectiveness of the index is only as good as the quality of the information reported. Each reporting agency is required by law to forward to the DOJ a report of every child abuse incident it investigates, unless the incident is determined to be unfounded or general neglect. Each reporting agency is responsible for the accuracy, completeness and retention of the original reports. The CACI serves as a “pointer” back to the original submitting agency.

(See <<http://oag.ca.gov/childabuse>> [as of June 26, 2023].) DOJ is not authorized to remove suspect records from CACI unless requested by the original reporting agency. (<<https://oag.ca.gov/childabuse/selfinquiry>> [as of June 26, 2023].)

3. Legislative History and Litigation

In 1963, the Legislature began requiring physicians to report suspected child abuse. (See *Smith v. M.D.* (2003) 105 Cal.App.4th 1169.) Two years later, the Legislature expanded the reporting scheme to require that instances of suspected abuse and neglect be referred to a central registry maintained by DOJ. In the early 1980s, the Legislature revised the then-existing laws and enacted the Child Abuse and Neglect Reporting Act (CANRA), which created the current version of CACI. These revisions did not require that listed individuals be notified of the listing, nor were individuals even able to determine whether they were listed in CACI.

In *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, the Court of Appeal held that a CACI listing implicates an individual's state constitutional right to familial and informational privacy, thus entitling the person to due process. (*Id.* at pp. 284-285.) Although CACI did not explicitly grant a hearing for a listed individual to challenge placement on the CACI, the statutory scheme contained an implicit right to a hearing. (*Id.* at p. 285.) The court declined to provide guidance on what procedures that hearing should include. The court merely stated that the county social services agency was required to afford a listed individual a "reasonable" opportunity to be heard. (*Id.* at p. 286.)

In *Humphries v. Los Angeles County* (9th Cir. 2009) 554 F.3d 1170, 1200, the Ninth Circuit held that an erroneous listing of parents who were accused of child abuse on the CACI without notice and an opportunity to be heard would violate the parents' due process rights. Specifically, "[t]he lack of any meaningful, guaranteed procedural safeguards before the initial placement on CACI combined with the lack of any effective process for removal from CACI violates the [parents'] due process rights." (*Id.*) The court ruled that, "California must promptly notify a suspected child abuser that his name is on the CACI and provide 'some kind of hearing' by which he can challenge his inclusion." (*Id.* at 1201.)

After *Humphries* was decided and while the case was on remand in the trial court, CANRA (Penal Code § 11164 et seq.), which contains the statutory scheme that governs CACI, was amended through AB 717 (Ammiano), Chapter 468, Statutes of 2011. AB 717 amended CANRA to provide for a hearing to seek removal from the CACI. That legislation also limited the reports of abuse and neglect for inclusion in CACI to substantiated reports; inconclusive and unfounded reports were removed. And of particular significance to this bill, the Legislature also amended the Act to prohibit law enforcement from forwarding reports of abuse and neglect to the DOJ for inclusion in the CACI. The policy committee analyses for AB 717 do not specifically discuss why the statute was amended to prohibit law enforcement from forwarding reports of abuse and neglect to the DOJ. However, court documents filed in the *Humphries* case appear to indicate that the court declined to issue an injunction because the conduct that led to the plaintiffs' unlawful inclusion on CACI, specifically law enforcement's ability to submit reports to CACI, was prohibited by AB 717 which had gone into effect a few months prior and thus the issue became moot. (Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment or Summary Adjudication of Issues, SACV 03-0697, *Humphries v. County of Los Angeles et al.*)

This bill would undo the prohibition enacted by AB 717 and would instead provide that a police or sheriff's department to which a report of child abuse or neglect is made on or after January 1, 2024 may forward to DOJ a report in writing of its investigation of known or suspected child abuse or neglect that is determined to be substantiated, other than incidents of general neglect. This bill states that a police or sheriff's department shall not forward a report to DOJ unless it has conducted an active investigation and determined that the report is substantiated. If a previously filed report proves to be not substantiated, DOJ shall be notified in writing and shall not retain the report.

This bill requires a police or sheriff's department that forwards a report to DOJ to adopt notification and grievance procedures as specified.

4. State Auditor Report on CACI

A recent audit of CACI found that the information in the database contained errors, failed to include substantiated reports of child abuse and inexplicably included persons who did not have any history of child abuse. At the time of the report, CACI contained references to more than 700,000 reports of child abuse. (California State Auditor, *The Child Abuse Central Index: The Unreliability of This Database Puts Children at Risk and May Violate Individuals' Rights* (May 2022) Report Number: 2021-112.)

The report summarized how reports of child abuse end up on CACI:

County social workers conduct investigations of suspected child abuse and document these investigations in the statewide CWS Case Management System

(CWS/CMS) maintained by the California Department of Social Services (Social Services). In addition to recording information on the allegations of abuse and the individuals involved, CWS/CMS contains a variety of information such as records of foster placements of children, California State Auditor Report 2021-112 9 May 2022 services provided to families, and relevant actions by the courts. When social workers complete the associated investigations and substantiate allegations, CWS/CMS automatically populates a CACI report with the available data. Social workers then print, finalize, and mail the reports to DOJ as DOJ requires. According to DOJ, if it determines that the reports are missing any required information, it mails the reports back to the county and requires the county to resend corrected reports. DOJ's staff manually enter complete reports into the CACI database. Then, a DOJ staff member reviews the data entry to ensure that it accurately reflects the reports before a separate DOJ unit scans and stores an electronic copy of the reports.

When counties need to amend or remove an existing report from CACI, they may mail, fax, or email DOJ a request to do so. According to DOJ, it reviews these requests and either updates the information in CACI or deletes the record.

Finally, DOJ staff process the requests from authorized users to search for individuals in CACI. According to DOJ, its staff search for possible matches between suspects in CACI and the individual's identifying information provided during the application process. Depending on the result of the CACI search, DOJ responds to the authorized user with a letter stating that either there was no match to CACI suspects or there was a possible match to CACI suspects. The possible match letter advises the authorized user to contact the county CWS agency that submitted the report for further information.

(*Id.* at pp. 8-9.) The audit found that CACI is missing many suspects with a history of child abuse and that DOJ and county agencies could not adequately explain the reason for the missing reports:

In evaluating CWS/CMS data statewide, we identified more than 52,000 reports of substantiated child abuse that the counties generated during the four-year period ending June 2021. However, as shown in Figure 2, CACI contained only about 25,000 of these substantiated reports, meaning that it did not include more than half—about 27,000. These 27,000 reports concern about 25,000 unique suspects, and more than 22,000 of these suspects had no other reported information in CACI. As a result, authorized users requesting background checks for these 22,000 individuals may be unaware that these individuals have a history of substantiated child abuse. Given this significant gap in CACI reports for the four-year period we reviewed, it is highly likely that CACI is also missing a large number of suspects from other years that we did not examine.

(*Id.* at p. 13.) The audit also found that CACI erroneously identified some individuals as having a history of substantiated child abuse:

CACI erroneously contains some reports of child abuse that are not substantiated, which could lead to DOJ informing an authorized user that an individual is a perpetrator of child abuse when he or she has no associated report of substantiated

child abuse. As a result, this erroneous information may limit that person's employment or opportunity to care for children. In fact, we identified instances in which DOJ informed authorized users that individuals were a possible match with someone in CACI based on inaccurate information. For the four years ending June 2021, we identified 298 reports of child abuse in CACI that were not supported by the corresponding county records. Because these reports were in CACI, DOJ sent 25 letters to authorized users notifying them that individuals were a possible match with a known child abuse suspect. As we discuss in the Introduction, state law requires the authorized user to follow up with the relevant county CWS agency for additional information, which could mitigate the impact of these errors. Additionally, according to DOJ, it informs individuals when it sends certain letters to authorized users of a possible match to a known child abuse suspect in CACI. However, even if the authorized user performs this follow-up, or the individual requests a grievance hearing to remove his or her erroneous information from CACI, the individual's employment or opportunity to care for children may be inappropriately denied or delayed.

(*Id.* at p. 20.) Additionally, the audit found that some counties failed to adhere to laws and regulations required for grievance hearings:

Specifically, three of the six counties [that were reviewed]—Contra Costa, Kern, and Stanislaus—do not have a policy allowing the suspect to challenge the impartiality of the grievance review officer. State regulations require that counties allow suspects to request the grievance review officer be disqualified on the grounds that a fair and impartial hearing cannot be held or a decision cannot be rendered. In addition, two of the six counties, Orange and Stanislaus, do not have a policy requiring that confidential evidence be returned to the county when the county provides a suspect with such evidence before a grievance hearing, which could result in the inappropriate release of sensitive or confidential information regarding the investigation. Finally, we found that three of the six counties—Calaveras, Contra Costa, and Shasta—lack policies for removing individuals from CACI if a grievance hearing determines that the allegations should not be substantiated. When CACI contains records of child abuse that are not accurate, individuals may be unjustifiably denied opportunities to care for children, such as obtaining employment at a child care center or adopting a child, or the individual may be inappropriately delayed from caring for children while the results of a grievance hearing are transmitted to DOJ.

(*Id.* at p. 21.) Lastly, the audit found that DOJ lacks adequate controls for ensuring that CACI contains accurate and appropriate records resulting in CACI containing significant errors. Specifically, some records in CACI did not contain the suspect's date of birth which prevents DOJ from removing persons as required by law: suspects from CACI are to be removed when the suspect reaches 100 years of age or when the suspect was a minor at the time of the incident and has had no subsequent CACI reports for 10 years. (See Pen. Code, §11169, subd. (f) and (g).) DOJ was also unable to ensure that suspects who should appropriately be removed are removed from CACI and that the county that made the request for removal is notified of the removal. (*Id.* at p. 22.)

5. Impacts of Inclusion in CACI

An individual is placed on CACI based on a substantiated allegation of child abuse, not a criminal conviction. A substantiated allegation means that the agency who submits the individual's name for inclusion in CACI has made a determination that it is more likely than not that the child abuse occurred.

An individual's placement on CACI can negatively impact employment or licensing, volunteer activities, parental rights or custody of a child, or fostering or adopting a child because a background check by an authorized entity will reveal that the person is on CACI. (Pen. Code, § 11170, subd. (b).) CACI is also accessible by law enforcement agencies to investigate cases. (*Id.*)

Once a person is included in CACI, if they are not successful at challenging their inclusion through the grievance process, they will remain in the index for life or until they reach the age of 100. A minor may also be placed on CACI although their listing will be removed ten years after the date of the incident that resulted in the CACI placement as long as the person is not again listed on CACI for a separate incident.

6. Similar Prior Legislation

AB 1544 (Lackey), of the 2019-2020 Legislative Session, would have allowed law enforcement agencies to report substantiated incidents of child abuse for inclusion in CACI and failed passage in this committee.

AB 2005 (Santiago), of the 2017-18 Legislative Session, was similar to this bill and was vetoed. According to the Governor's veto message:

In 2011 I signed AB 717 (Ammiano), which was intended to update the procedures governing the index as well as establish due process protections for individuals added to the database. At that time, the ability of law enforcement to submit cases to the index was eliminated, in part to eliminate redundancies and reduce costs.

I am not fundamentally opposed to once again granting law enforcement the authority to submit cases to the index, however this bill does so in a manner that would undoubtedly lead to inconsistent application across and within counties. I encourage the proponents to work with the relevant stakeholders, including the Department of Social Services and Department of Justice, to further refine this proposal for future consideration.

7. Argument in Support

According to the Los Angeles County Sheriff's Department:

As of January 1, 2012, law enforcement is prohibited from forwarding to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect. Since that time investigations of suspected child abuse or severe neglect, including sexual abuse by, for example, day care providers, clergy, or babysitters have gone unreported.

According to the DOJ CACI internet homepage, “The information in CACI is available to aid law enforcement investigations, prosecutions, and to provide notification of new child abuse investigations reports involving the same suspects and/or victims.” AB 1544 will ensure the Child Abuse Central Index continues to be a critical and useful tool to those charged with child abuse investigation.

Assembly Bill 1544 would delete the provision prohibiting a police or sheriff’s department from forwarding a report of suspected child abuse to DOJ. This bill would require a police or sheriff’s Department receiving a report of known or suspected child abuse or severe neglect to forward any such reports that are substantiated to the DOJ.

Additionally, AB 1544 will clarify due process procedures for those who wish to contest their inclusion in the CACI.

8. Argument in Opposition

According to Public Counsel:

The existing restriction against law enforcement reporting to CACI was part of a set of statutory reforms intended to address the due process violations and abuses that had occurred. CACI is a database of reported incidents of child abuse and neglect, maintained by the California Department of Justice. The information can be accessed by law enforcement agencies or other agencies as needed in conducting child abuse investigations, or by agencies for use in making decisions regarding hiring and licensing for positions involving supervision of children and decisions regarding prospective foster and adoptive parents. For much of the history of the program, it had no safeguards to ensure that the information included in the database was reliable, and gave the subjects of the reports no means of challenging the information. CACI became the subject of numerous legal challenges. In response to one such challenge, the Ninth Circuit Court of Appeals held that the CACI violated the due process clause of the Fourteenth amendment because the then-existing procedures for challenging allegations reported into the system were inadequate. *Humphries v. County of Los Angeles* (2009) 554 F.3d 1170, 1200.)

....

Following the decision in the *Humphries* case, the Legislature made significant changes to Penal Code section 11169 to put in place some procedural safeguards. The changes included changing the standard for the inclusion of report on CACI from “determined not to be unfounded” to “determined to be substantiated,” giving persons listed on the CACI the right to a hearing to challenge the listing, and adding subdivision (b) to bar police and sheriffs’ departments from forwarding reports to CACI. In addition to these statutory changes, a settlement decision in the case of *Gomez v. Saenz* put in place limited due process requirements regarding reports of abuse submitted to CACI by social service agencies. See *Gomez v. Saenz Settlement: Training for Child Welfare Workers and Supervisors*. . . . These requirements resulted in the adoption of the DSS

regulations now applicable when child welfare agencies submit reports onto CACI.

Despite these changes, serious concerns remain regarding the rights of those reported to CACI under existing law. The standard for finding a report to be “substantiated” requires only that the investigator who conducted the investigation – not an independent reviewer – determine that it is “more likely than not” that the abuse occurred. Penal Code §11165.12. The change to this standard would not have helped the Humphries, who were the subject of a report identified as “substantiated” by the Los Angeles Sheriff’s Department. The DSS grievance procedures under the *Gomez v. Saenz* case also fail to protect the rights of those reported: these regulations have inadequate service requirements, fail to provide individuals with adequate notice of the details of the alleged incident, and fail to provide notice of the potential consequences of being listed on CACI, and create an unreasonable deadline for filing a challenge. The grievance procedures proposed in AB 1544 share these shortcomings. CACI remains a database of unproven allegations that can subject the persons listed to the stigma of being identified as child abusers as well as numerous practical consequences, and individuals listed have little recourse.

Because of the grave dangers to the rights of those who are named in allegations reported to CACI, any change to allow law enforcement to resume submitting reports to the system must incorporate adequate due process protections. Even as amended, the procedures proposed in AB 1544 are not adequate to protect the rights of individuals, and particularly not where there is law enforcement involvement. Without adequate due process protections, allowing law enforcement to report individuals to the CACI poses grave dangers to the rights of Californians who have not been convicted of any crime.

-- END --