
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2005 **Hearing Date:** June 19, 2018
Author: Santiago
Version: June 11, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Child Abuse Central Index*

HISTORY

Source: Los Angeles County Sheriff's Department
Los Angeles County District Attorney's Office

Prior Legislation: AB 1707 (Ammiano), Ch. 848, Stats. 2012
AB 717 (Ammiano), Ch. 468, Stats. 2011
AB 2442 (Keeley), Ch. 1064, Stats. 2002
AB 1447 (Granlund), 2000, never heard in Sen. Judiciary Comm.

Support: California District Attorneys Association; California Police Chiefs Association;
California State Sheriffs' Association; ICAN Associates for the Prevention of
Child Abuse; Los Angeles County Board of Supervisors; San Bernardino County
Sheriff's Department

Opposition: American Civil Liberties Union of California

Assembly Floor Vote: 78 - 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 to forward a substantiated report of child abuse or severe neglect to the Department of Justice (DOJ) 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 a specified child protection agency. (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 eliminates the provision in existing law which 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 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 states that a police or sheriff's department that forwards a substantiated report of child abuse or severe neglect to DOJ is subject to all of the requirements imposed by the statutes governing CACI and requires the department adopt notification and grievance procedures that are consistent with specified regulations of the Department of Social Services, or any successor regulation thereto.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Because CPS agencies only investigate child abuse or severe neglect cases involving family members, only known or suspected familial abusers are reported to the DOJ. These agencies do not report non-familial abusers to the CACI. The elimination of law enforcement's authority to make these reports has resulted in the omission of reports of non-familial abusers in the CACI. This has created a public safety concern because known or suspected non-familial abusers, such as teachers, day care workers, coaches and clergy, are not being reported to the CACI.

According to the Inter-Agency Council on Child Abuse and Neglect (ICAN), there has been a significant reduction in entries to the CACI since the 2012 amendment took away law enforcement's authority to forward reports to the DOJ. Prior to the 2012 amendment, there were approximately 18,000-19,000 annual entries. Today, the number of actual entries is closer to 6,000-7,000. AB 2005 will ensure the CACI continues to be a critical and useful tool to those charged with child abuse investigations.

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 Web site:

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.

Each year, child abuse investigations are reported to the CACI. These reports pertain to investigations of alleged physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child. The reports are submitted by county welfare and probation departments.

The information in the Index 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 the Penal Code.

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;
- 4) Type(s) of abuse investigated; and
- 5) The findings of the investigation for the incident are substantiated.

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 11, 2018].)

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 11, 2018].)

3. Prior Legislation 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 the 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 the 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 the CACI does 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.)

In 2011, the Legislature amended the Child Abuse and Neglect Reporting Act to provide for a hearing to seek removal from the CACI. (See AB 717 (Ammiano), Chapter 468, Statutes of 2011.) The same 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 (Ammiano) do not specifically discuss why the statute was amended to prohibit law enforcement from forwarding reports of abuse and neglect to the DOJ.

This bill would undo the latter legislative change and instead would provide that a police or sheriff's department receiving a report of known or suspected child abuse or severe neglect may forward any such reports that are investigated and determined to be substantiated to DOJ for inclusion in CACI.

4. Current Practice

Department of Social Services (DSS) child welfare staff will submit the names of perpetrators from "substantiated" referrals of abuse and/or neglect to the DOJ for inclusion in the CACI. Staff will further inform those persons that their name has been submitted for listing on the CACI, and provide them with information on the process to grieve/contest the listing.

In response to the settlement in *Gomez v. Saenz*, all child welfare departments in California have agreed to notify individuals of their listing on the CACI, give individuals the right to grieve the listing, and provide grievance hearings for those who challenge the listing.

Pursuant to the *Gomez v. Saenz* settlement, when submitting a person's name for listing on the CACI, the Department is required to provide the person (by mail) with three forms – the completed Notice of Child Abuse Central Index Listing (SOC 832), the Request for Grievance Hearing (SOC 834), and the Grievance Procedures for Challenging Reference to the Child Abuse Central Index (SOC 833). (<http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC833.pdf>)

If an individual requests a grievance hearing, there are strict procedures to follow. For example, the hearing must occur within 10 business days, and no later than 60 calendar days from the request for a hearing. The complaining party is entitled to have an attorney or other representative assist him or her at the hearing. The grievance hearing officer must be a person

not directly involved in the decision or in the investigation that is the subject of the hearing; nor can a coworker or direct supervisor of persons involved in making the finding be the hearing officer. The complaining party and his or her representatives must be permitted to examine all records and relevant evidence. The complaining party is entitled to a witness list. All testimony

must be given under oath or affirmation. The proceedings must be audio recorded as part of the official administrative record. There must be a written decision, and the complainant may challenge that decision by means of a writ of mandate.

<http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC833.pdf>

This bill requires a police or sheriff's department that chooses to submit a substantiated report of child abuse or severe neglect to DOJ for inclusion in CACI to adopt notification and grievance procedures that are consistent with DSS's policies and procedures on challenging inclusion in CACI.

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