
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2085 **Hearing Date:** June 21, 2022
Author: Holden
Version: May 19, 2022
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Crimes: mandated reporters*

HISTORY

Source: Children’s Law Center of California

Prior Legislation: AB 506 (Lorena Gonzalez) Chapter 169, Stats. 2021
AB 1963 (Chu), Chaptered 243, Stats. 2020
AB 189 (Kamlager-Dove), Chapter 674, Stats. 2019
AB 717 (Amiano) Chapter 468, Stats. 2011
SB 1313 (Kuehl) Chapter 842, Stats. 2004
AB 2442 (Keeley) Chapter 1064, Stats. 2002
SB 1312 (Peace) Chapter 1106, Stats. 2002 – amended into unrelated bill
AB 1447 (Granlund) 1999-2000 never heard Senate Judiciary
SB 644 (Polanco) Chapter 842, Stats. 1997
AB 1065 (Goldsmith) Chapter 844, Stats. 1997
SB 2457 (Russell) Chapter 1497, Stats. 1988

Support: ACLU California Action; All Saints Church Foster Care Project; California Catholic Conference; Los Angeles Dependency Lawyers, INC.; National Center for Lesbian Rights; The Children’s Partnership

Opposition: None known

Assembly Floor Vote: 53 - 2

PURPOSE

The purpose of this bill is to redefine “general neglect” for purposes of the Child Abuse and Neglect Reporting Act (CANRA) by excluding a person’s economic disadvantage, as specified.

Existing law establishes CANRA, which generally is intended to protect children from abuse and neglect. (Penal Code § 11164.)

Existing law defines “neglect” under CANRA as the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare. The term includes both acts and omissions on the part of the responsible person. (Penal Code § 11165.2)

Existing law defines “severe neglect” under CANRA as the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. “Severe neglect” also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as specified, including the intentional failure to provide adequate food, clothing, shelter, or medical care. (Penal Code § 11165.2 (a).)

Existing law specifies that “the willful harming or injuring of a child or the endangering of the person or health of a child” means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered. (Penal Code § 11165.3.)

Existing law defines “general neglect” under CANRA as the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred. (Penal Code § 11165.2 (b).)

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.)

Existing law defines “mandated reporter” under CANRA as specific child-care custodians, health practitioners, law enforcement officers, and other medical and professional persons. (Penal Code § 11165.7.)

Existing law requires any mandated reporter who has knowledge of or observes a child, their professional capacity or within the scope of their employment whom they know or reasonably suspect has been the victim of child abuse or neglect, to report it as specified, to any police or sheriff's department, a county probation department if designated by the county to receive mandated reports, or the county welfare department. (Penal Code §§ 11166 (a) 11165.9.)

Existing law defines “reasonable suspicion” under CANRA as meaning 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 the person’s training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse. (Penal Code § 11166 (a)(1).)

Existing law mandates reports of suspected child abuse or neglect to include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address,

present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to them. (Penal Code § 11167 (a).)

Existing law states that information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect. (Penal Code § 11167 (b).)

Existing law allows information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, to be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect. (Penal Code § 11167 (c).)

Existing law keeps the identity of all persons who report confidential and disclosed only among agencies receiving or investigating mandated reports. No agency or person shall disclose the identity of any person who reports under this article to that person's employer except with the employee's consent or by court order. (Penal Code § 11167 (d).)

Existing law provides that notwithstanding the confidentiality requirements of these provisions, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect, as specified, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against them, in a manner that is consistent with laws protecting the identity of the reporter. (Penal Code § 11167 (e).)

Existing law requires specified government agencies to forward to the DOJ a report of every case of suspected child abuse or neglect that it investigates and determines to be substantiated; and if a previously filed report proves to be not substantiated, the DOJ shall be notified in writing, and shall not retain that report. (Penal Code § 11169 (a).)

Existing law defines “substantiated report” as a report that is determined by the investigator to constitute child abuse or neglect based on some evidence that makes it more likely than not that child abuse or neglect occurred. (Penal Code § 11165.12(b).)

Existing law provides that any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of \$1,000 or by both. 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, the failure to report is a continuing offense until a specified agency discovers the offense. (Penal Code § 11166 (c).)

This bill clarifies that for the purposes of mandating reporting, “general neglect” means that the child is at substantial risk of suffering serious physical harm or illness and that it does not include a parent’s economic disadvantage.

This bill also clarifies that the duty to report suspected child abuse is only required when the abuse is “reasonably” suspected.

COMMENTS

1. Need for This Bill

According to the author:

Children of color are significantly more likely to be reported for allegations of abuse and neglect, despite the vast majority of those allegations being unfounded or unsubstantiated. A recent study showed that half of Black children, as well as half of Native American children, experienced an investigation at some point during their childhood, compared to nearly a quarter of white children.

The majority of the calls that come in to the Child Protection Hotline are for the catch all category of neglect, including cases of poverty, lack of resources and domestic violence. 80% of the neglect calls are not substantiated. Not only does this result in over surveillance of families that should be served outside of the Child Welfare System, it also burdens an already overwhelmed system.

Consequently, the over surveillance of families of color also results in undo trauma to parents and children, often leading to negative health outcomes. These health outcomes are significantly worse for mothers and babies who are separated by the Child Welfare System for issues largely related to economic insecurity.

Existing law defines general neglect as a failure to provide “adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred”. As defined, general neglect is consistent with issues of poverty and families lacking access to resources, which is an issue that is more appropriately addressed through social service programs such as CalWORKS. By removing general neglect reporting requirements from CANRA, we can ensure that our Child Welfare System is not overburdened with cases that can be more appropriately addressed through existing services, and families are not unnecessarily entering the Child Welfare System and being subjected to supervision for issues of poverty

2. The Child Abuse Reporting Act (CANRA)

CANRA (Penal Code §§ 11164 et seq.) provides “a comprehensive reporting scheme aimed toward increasing the likelihood that child abuse victims [will] be identified.” (*Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 90.) “The Act requires persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation.” (*Ibid.*; accord, *James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 253-254.)

The Act identifies over 40 separate categories of mandated reporters. (Penal Code § 11165.7, (a)(1)-(49).) A mandated reporter must report known or reasonably suspected child abuse or neglect to a designated agency under section 11165.9, specifically “any police or sheriff’s department, not including a school district police or security department, county probation department, if designated by the county to receive such reports, or county welfare department.” (Penal Code, § 11166 (a).) Failure to make the required report is a misdemeanor. (Penal Code, § 11166 (c).)

3. The Role of Poverty in Reports of Child Abuse and Neglect

Under current law, a mandated reporter must report known or reasonably suspected “general neglect.” This is defined as the “negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.” (Penal Code, § 11165.2 (b).)

Unfortunately, reporting for general neglect can often be just reporting a family for being poor, even when there is no substantial risk of physical harm to the child.

This bill would refine the definition of “general neglect” by stating that it is when there is no physical harm by the child is at substantial risk of suffering serious physical harm or illness. The bill also specifically states that “general neglect” does not include a parent’s economic disadvantage.

4. Argument in Support

The ACLU California Action supports this bill stating:

AB 2085 will address concerns with general-neglect reporting requirements that require families to be reported to child protective services agencies for poverty-related reasons by clarifying that general neglect does not include a parent’s economic disadvantage. Any person could still opt to report a family for poverty-based reasons should they wish; however, mandated reporters would no longer be required to do so and would not be subject to liability for failing to report families for poverty-related reasons. We have heard from teachers, for example, who do not want to report in general neglect situations that are poverty-based but who feel they have to report because of their liability exposure if they do not report, including both criminal penalties and civil fines.

Research does not support the assertion that mandatory reporting protects children; it shows in fact that it may cause more harm through increased system involvement. Many studies show that children do better at home than in foster care, and that mandated reporting does not decrease child abuse or harm. Additionally, the current mandated reporter system results in irreparable harm to families through consequences such as negative health outcomes – especially for mothers and babies who are separated by the family regulation system for issues largely related to economic insecurity, short-term removals and extended system-involvement. Nationally, in 2017, of all mandated reporter calls (approx. 4.1 million), only 9% ended in substantiated investigations (meaning there was any purported cause for concern to proceed with an investigation). Of that 9%, three quarters of cases were related to neglect, which is frequently attributed to poverty and the need for resources and support. Mandated reporting undermines such support services because families are less likely to trust support services forced upon them through this punitive intervention and system surveillance process.

Limiting the kinds of neglect that must be reported could substantially shrink the pipeline of people brought into the family regulation system for reasons unrelated to harming a child. AB 2085 would allow teachers and other mandated reporters to

not report much of what gets reported now as a result of poverty rather than negligence and clarifies general neglect reporting requirements to ensure that poverty-related reasons are addressed outside of the family regulation system while continuing to require that mandatory reporters report instances of child abuse and neglect. For this reason, ACLU California Action supports AB 2085.

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