
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 391 **Hearing Date:** June 27, 2023
Author: Jones-Sawyer
Version: February 2, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Child abuse and neglect: nonmandated reporters*

HISTORY

Source: Los Angeles Dependency Lawyers

Prior Legislation: AB 2085 (Holden), Chapter 770, Stats. 2022
AB 717 (Ammiano), Chapter 468, Stats. 2011

Support: A New Way of Life Re-entry Project; All of Us or None, Orange County;
National Association of Social Workers, California Chapter; Root & Rebound;
Starting Over, INC.; Western Center on Law & Poverty

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to require a person making a child abuse or neglect report, who is not a mandated reporter, to provide specified information in the report, including their name, telephone number, and information that gave rise to the suspicion of child abuse or neglect.

Existing law establishes the Child Abuse and Neglect Reporting Act. (Penal Code § 11164.)

Existing law defines “Child” as a person under 18 years old. (Penal Code § 11165.)

Existing law defines “Child abuse or neglect” as physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse, neglect, the willful harming or injuring of a child or the endangering of the person or health of a child, and unlawful corporal punishment or injury. Child abuse or neglect does not include a mutual affray between minors or 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 lists the categories of individuals who are mandated reporters. (Penal Code, § 11165.7.)

Existing law permits reports of suspected child abuse or neglect to be made 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. (Penal Code § 11165.9.)

Existing law provides that agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person and are required to maintain a record of all reports received. (Penal Code § 11165.9.)

Existing law requires a mandated reporter to make a report whenever, in their professional capacity or within the scope of their employment, they have knowledge of or observe a child whom they know or reasonably suspect has been the victim of child abuse or neglect. (Penal Code § 11166.)

Existing law allows any other person who is not a mandated reporter, who has knowledge of or observes a child whom the person knows or reasonably suspects has been a victim of child abuse or neglect, to report the known or suspected instance of child abuse or neglect. (Penal Code § 11166 (g).)

Existing law requires reports of known or reasonably 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 knowledge or reasonable suspicion of child abuse or neglect and the source or sources of that information. (Penal Code § 11167 (a).)

Existing law provides that persons who are not mandated reporters are not required to include their names when reporting suspected abuse or neglect. (Penal Code § 11167 (f).)

Existing law states that the identity of all persons who report shall be confidential and may be disclosed only as follows:

- To agencies receiving or investigating mandated reports;
- To the prosecutor in a criminal prosecution;
- To the prosecutor in specified proceedings arising from alleged child abuse;
- To counsel appointed in specified child dependency proceedings;
- To the county counsel or prosecutor in specified and custody and child dependency proceedings;
- To a licensing agency when abuse or neglect in out-of-home care is reasonably suspected;
- When the persons waive confidentiality; or,
- By court order. (Penal Code § 11167 (d)(1).)

Existing law prohibits any agency or person from disclosing the identity of any person who reports to that person's employer, except with the employee's consent or by court order. (Penal Code § 11167 (d)(2).)

Existing law provides that a representative of a child protective services agency performing an investigation of a report of child abuse or neglect 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 provides that reports of child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice shall be confidential and may be disclosed only as specified. (Penal Code § 11167.5.)

This bill deletes the provision that a person reporting child abuse or neglect, who is not a mandated reporter, is not required to disclose their name.

This bill requires a person reporting suspected child abuse or neglect, who is a not a mandated reporter, to include all of the following information in the report:

- a) Their name;
- b) Their telephone number;
- c) The information that gave rise to the reasonable suspicion of child abuse or neglect; and,
- d) The source of the information that gave rise to the reasonable suspicion of child abuse or neglect.

This bill prohibits the transmission of a report of suspected child abuse or neglect from person who is not a mandated reporter to a local child protective service for investigation unless the reporter's name and telephone number are provided.

COMMENTS

1. Need for This Bill

According to the author:

Anonymous reports disproportionately affect low-income people of color. Research has shown that black children are twice as likely to be reported as white children and minority parents are more likely to receive higher levels of state intervention following a report. False reports only compound the suffering of these families that are already struggling. Confidential reporting would greatly increase the likelihood that resources are spent on legitimate cases of child abuse or neglect. In doing so, it would promote equity by increasing the likelihood that reports are justified.

2. Child Abuse and Neglect Reporting Act

The Child Abuse Neglect and Reporting Act (Pen. 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. (Pen. Code, § 11165.7, subd. (a)(1)-(49).) A mandated reporter must report known or reasonably suspected child abuse or neglect to a designated agency, 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. Reports of Child Abuse or Neglect by Nonmandated Reporters

The Child Abuse Neglect and Reporting Act also permits any person that is not a mandated reporter, who has knowledge of, or reasonably suspects a child has been a victim of child abuse or neglect, to report the known or suspected instance of child abuse or neglect. (Penal Code § 11166 (g).)

Unlike mandated reporters of child abuse or neglect, persons who are not mandated reporters are not required to include their names and contact information in the report. (Penal Code, § 11167, (f).) This bill would require their identifying information, specifically their name, phone number, information that gave rise to the suspected abuse or neglect, and the source of that information.

4. Anonymous Reporting

Anonymous reporting allows individuals to make allegations of child abuse or neglect without disclosing any identifying information, making it easy to falsify a claim. For example, there have been reports of individuals making reports of child abuse or neglect under the shield of anonymity to settle a grudge. Advocates for domestic violence survivors, in particular, have long been concerned about the role such reports play in keeping women in violent relationships and in punishing them when they leave them. Domestic violence advocates, “see the threat of false reports to child welfare and then actual malicious and retaliatory reporting by batterers at all different stages of abusive relationships, and we see it frequently,” (Blustain R., *False Abuse Reports Trouble Child Welfare Advocates* (Oct. 14, 2013) < <https://citylimits.org/2013/10/04/false-abuse-reports-trouble-child-welfare-advocates/>> [as of March 2, 2023].)

Even in the most well intended cases of child abuse and neglect reporting, an inherent flaw is that the public is not trained in what to report. Lay people have a higher probability of making baseless reports simply because they do not understand the signs and definitions of child maltreatment. (Worley, N. K., & Melton, G. B., *Mandated Reporting Laws a Child Maltreatment: The Evolution of a Flawed Policy Response* (2013) at p. 103–118.) In contrast, mandated reporters receive extensive trainings, and they are required to provide their names and employment information so they can be held accountable for proper reporting and evidence

gathering. (Dale Margolin Cecka, *Abolish Anonymous Reporting to Child Abuse Hotline* (2014) 64 Cath. U. L. Rev. 51, 63.)

In other contexts, before arresting or detaining anyone on the basis of any anonymous tip, police must corroborate aspects of the allegation made by the anonymous caller. (*Florida v. J.L.* (2000) 529 U.S. 266 [a “bare-bones” tip from an anonymous source providing no details regarding how the source knew about the crime was not reliable to justify investigative detention].) However, law enforcement and child welfare agencies have an opposite mandate: they are required to investigate reports of child abuse and neglect. (See e.g., Penal Code §§ 11166.3, 11165.14, 11165.9.) Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or any other person unless otherwise authorized. (Penal Code § 11165.9.)

Unfounded cases of child abuse and neglect can lead to families being stigmatized by the community, parents losing employment because of the demands of formally refuting abuse allegations, or unnecessary removal of children from their homes to be placed in foster care, itself a risk factor for psychological harm. The investigation itself, even if it fails to end in substantiation, also can fractionate the family and destroy relationships with people outside the family. Indeed it inevitably results in a substantial invasion of privacy and almost certainly increases anxiety and helplessness. (Worley, N. K., & Melton, G. B., *supra*, at p. 103, 107.)

This bill would require a nonmandated reporter of child abuse or neglect to disclose their name and telephone number, and, significantly, the information that gave rise to the report and the source of the information that give rise to the report. In so doing, the agencies can more accurately substantiate claims of child abuse or neglect and more efficiently manage their caseloads. Additionally, requiring a reporter to disclose their names and information giving rise to the report could deter unfounded, baseless reports that are merely intended to harass parents and families.

While this bill would abolish anonymity it does not impact *confidentiality*. The Penal Code mandates that the identity of “all persons” who report shall be confidential and may be disclosed only to specified agencies, prosecutors, and counsel in connection with investigations of child abuse and child dependency proceedings. (Penal Code § 11167(d)(1).) State law also specifically prohibits an investigator of a report from disclosing the identity to the subject of the investigation and prohibits any agency from disclosing the identity of any person who reports to that person’s employer, except with the employee’s consent or by court order. (Penal Code §§ 11167 (e) & (d)(2).)

5. Argument in Support

Los Angeles Dependency Lawyers support this bill stating:

False reports of child abuse or neglect are sometimes used as a form of domestic harassment or a way to settle grievances. This is possible because anonymous reporting allows individuals to make allegations of child abuse or neglect without leaving any identifying information, making it easy to falsify a claim. All too often, abusive partners will make anonymous, false reports to the child welfare hotline in order to gain leverage in a custody dispute and weaponize the system against their victims. These perpetrators know that all they need to do is leave one or two fake tips, and their grab for custody is underway. In addition, this tactic is used by

dishonest landlords hoping to remove unwanted tenants without going through the proper eviction procedures.

These malicious reports trigger intrusive and frightening investigations that damage the children's well-being and disrupt family functioning. In the eyes of the children, their home is invaded by strangers who insist on pulling them away from their parents, asking odd questions, and telling them that they could be taken from their family to an unknown place. Parents live in fear that at any moment, their children could be placed in foster care despite any valid claim of abuse or neglect. Even if the family is fortunate enough to remain together, the damage to their security is done. We must step in to protect these families from further victimization. Further, we must stop diverting crucial resources away from other children who do need governmental intervention.

It should also be noted that anonymous reports disproportionately affect low-income people of color. Research has shown that black children are twice as likely to be reported as white children, and minority parents are more likely to receive higher levels of state intervention following a report. False reports compound the suffering of families that are already struggling. Confidential reporting would greatly increase the likelihood that resources are spent on legitimate cases of child abuse or neglect.

The problem of harassment in reporting could be solved by simply requiring all reporters of child abuse and neglect to provide their names and contact information. The new confidential reporting system would maintain strict confidentiality around their identity. This would discourage intentional fake reporting and allow child protective services to better assess allegations.

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