

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 1544 (Lackey) – As Introduced February 17, 2023

SUBJECT: Child Abuse Central Index

SYNOPSIS

The Child Abuse Central Index (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 probation departments) to meet the requirements for inclusion, according to standards that have changed over the years.

In 2011, AB 717 (Ammiano, Chap. 468, Stat. 2011) prohibited law enforcement from forwarding reports of abuse and neglect to the California Department of Justice (DOJ) for inclusion in the CACI. This bill would undo that legislative change, and allow, but not require, law enforcement to report claims of substantiated abuse or severe neglect to CACI. This bill, however, specifically prohibits reporting claims of general neglect. In addition, this bill will establish a grievance process at the DOJ similar to the one currently in place at the Department of Social Services (DSS) for people who believe that their names are wrongly included in the database.

The jurisdiction of this Committee spans a wide range of technology-related issues, and includes matters affecting consumer protection in both the digital and analog worlds. Specifically, the Committee has jurisdiction over matters related to privacy, the protection of personal information (including digital information), the security of data, and information technology, as well as false advertising, charitable solicitations, weights and measures, and consumer protection generally. The Committee is also responsible for oversight of the Department of Technology within the State's Government Operations Agency.

Given that jurisdiction, the policies in this bill are generally outside of this Committee's jurisdiction and there is nothing in this bill that raises concerns with the issues that are within its purview.

This bill is sponsored by the Los Angeles County Inter-agency Council on Child Abuse and Neglect (ICAN). Opponents include ACLU California Action, Dependency Advocacy Center, Dependency Legal Services, and Los Angeles Dependency Lawyers, INC.

This bill previously passed the Public Safety Committee on a 5-0-3 vote.

SUMMARY: Allows 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 investigated and determined to be substantiated to the California Department of Justice (DOJ) for inclusion in the Child Abuse Central Index (CACI), except as specified. Specifically, **this bill:**

- 1) Eliminates the provision in existing law which prohibits law enforcement from forwarding reports of abuse and neglect to DOJ for inclusion in 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.

- 2) Specifies that law enforcement cannot forward cases of general neglect.
- 3) Specifies that law enforcement can only forward reports of known or suspected child abuse or severe neglect made on or after January 1, 2024, or reports made before January 1, 2024, pertaining to open cases still being investigated on that date.
- 4) 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.
- 5) 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.
- 6) Requires the notification procedures to, at a minimum, include the following:
 - a) A notice of CACI listing which includes the victim's name, a brief description of the alleged abuse or severe neglect, and the date and location where it occurred.
 - b) A description of the grievance procedures for challenging inclusion in CACI.
 - c) A form to request a grievance hearing.
- 7) Provides that this notification must be sent to the person's last known address within five business days of submission of the person's name to DOJ for inclusion in CACI.
- 8) Requires DOJ to create a grievance procedure for reports of substantiated allegations of abuse and severe neglect that were made by law enforcement.
- 9) Requires a person wanting a grievance hearing to request it within 30 days. Failure to send the completed request form within this time frame constitutes a waiver of the right to the hearing.
- 10) States that a completed grievance form must contain the referral number; the name of the investigating agency; the person's contact information and date of birth; the reason for the grievance, and contact information for the person's attorney or representative, if any.
- 11) Allows the person requesting the hearing to have an attorney or other representative present.
- 12) States that the grievance hearing must be scheduled within 10 business days, held within 60 calendar days, and that notice of the hearing date must be given at least 30 days before its scheduled date, unless the parties agree otherwise.
- 13) Allows either party to request a continuance not to exceed 10 days. Additional continuances may be allowed for good cause or with mutual agreement of both parties.
- 14) Allows the law enforcement agency forwarding CACI submission to resolve the grievance at any point by changing a finding of substantiated abuse or severe neglect to a finding of not substantiated and by notifying DOJ of the need to remove the person's name from CACI.

- 15) Allows the person requesting the hearing or their attorney, as well as the law enforcement agency, to examine the all records and relevant evidence that is not otherwise confidential that the opposing party intends to introduce at the grievance hearing.
- 16) Requires DOJ to redact specified information to protect the identity and health and safety information of a mandated reporter.
- 17) Require the law enforcement agency that forwarded the report to release disclosable information to the person's attorney if that person has provided written consent.
- 18) Requires the parties to exchange witness lists at least 10 days in advance of the hearing. Failure to do so may constitute grounds for objection to the consideration of the evidence or testimony of a witness during the hearing.
- 19) Establishes rules for presentation of testimony and examination of the witnesses.
- 20) Requires DOJ to make a determination at the conclusion of the hearing based on the evidence presented whether the allegation of abuse or severe neglect is unfounded, substantiated, or inconclusive.
- 21) Mandates that the hearing be audio recorded as part of the official administrative record and that DOJ maintain the administrative record, as specified, and to file it with the court in the event any party seeks judicial review.
- 22) Requires DOJ to render a written decision within 30 days of the grievance hearing and requires the decision be sent to the person who requested the hearing and their attorney, if applicable.
- 23) Makes the grievance hearing administrative record confidential and requires its retention for at least one year from the date of decision.
- 24) States that DOJ shall bill the forwarding law enforcement agency for the expenses related to the grievance hearing.

EXISTING LAW:

- 1) 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, shall report it immediately to a specified child protection agency. (Pen. Code § 11166(a).)
- 2) Requires specified local agencies to send DOJ reports of every case of child abuse or severe neglect that they investigate and determine to be substantiated. (Pen. Code § 11169(a).)
- 3) Directs the DOJ to maintain an index, referred to as CACI, of all substantiated reports of child abuse and neglect submitted as specified. (Pen. Code § 11170(a)(1) & (a)(3).)
- 4) Allows DOJ to disclose information contained in 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(b).)

- 5) Requires reporting agencies to provide written notification to a person reported to CACI. (Pen. Code § 11169(c).)
- 6) Provides 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 CACI has the right to a hearing which comports with due process before the agency that requested the person's CACI inclusion. (Pen. Code § 11169(d) & (e).)
- 7) Requires a reporting agency to notify DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report. (Pen. Code § 11169 (h).)
- 8) Requires DOJ to remove a person's name from CACI when DOJ is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report. (Pen. Code § 11169 (h).)
- 9) Provides that any person listed in CACI who has reached age 100 is to be removed from CACI. (Pen. Code § 11169 (f).)
- 10) Provides that any non-reoffending minor who is listed in CACI must be removed after 10 years. (Pen. Code § 11169 (g).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS:

1) **How the Child Abuse Central Index (CACI) works.** Investigated reports of child abuse are forwarded to DOJ to be placed in CACI databases. 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 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 is also 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 CACI includes:

1. Names and personal descriptors of the suspects and victims listed on reports.
2. The 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.

2) **Background.** 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

probation departments) to meet the requirements for inclusion, according to standards that have changed over the years.

In 1980, the Child Abuse and Neglect Reporting Act expanded the list of mandatory reporters and allowed reviews of CACI for screening purposes before permitting close contact with children. 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.

In *Humphries v. Los Angeles County* (9th Cir. 2009) 554 F.3d 1170, the Ninth Circuit held that an erroneous listing of parents who were accused of child abuse on CACI without notice and an opportunity to be heard violated 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.* at 1200.) 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 CACI. (See AB 717 (Ammiano, Chap. 468, Stat. 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 DOJ for inclusion in CACI.

3) **Purpose.** The intent of this bill is to restore law enforcement's ability to enter data into CACI. In addition, it moves the grievance process away from local law enforcement agencies and places it within DOJ. According to the author, this will streamline the ability to have more accurate information within the system while providing that individuals familiar with evaluating the statutes related to a CACI listing should decide whether to uphold or dismiss a listing. The bill would remove the decision from the direct chain of command where the listing originated. It does not make changes to the process for social services.

4) **Author's statement.** According to the author:

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 decisionmakers 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.

5) **Assembly Public Safety Committee analysis of the bill.** Prior to being heard in this Committee, this bill was heard in the Assembly Public Safety Committee. According to that Committee's analysis:

In 2018, the Legislature passed AB 2005 (Santiago), which was substantially similar to this bill; however it was vetoed by then-Governor Jerry Brown. In his veto message, the Governor said:

“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.”

This bill addresses the crux of former Governor Brown's veto message because it requires the DOJ to establish a grievance hearing process for persons wishing to challenge a submission made by a law enforcement agency, and moreover requires the DOJ to administer those hearings.

The Public Safety Committee passed this bill on a 5-0-3 vote at its hearing on April 11, 2023.

6) **Analysis.** As noted previously in the **Background** section, AB 717 (Ammiano, Chap. 468, Stats. 2011) prohibited law enforcement from forwarding reports of abuse and neglect to DOJ for inclusion in CACI. This bill would undo that legislative change, and allow, but not require, law enforcement to report claims of substantiated abuse or severe neglect to CACI. This bill, however, specifically prohibits reporting claims of general neglect. In addition, this bill will establish a grievance process at DOJ similar to the one currently in place at the Department of Social Services (DSS) for people who believe that their names are wrongly included in the database.

The jurisdiction of this Committee spans a wide range of technology-related issues, and includes matters affecting consumer protection in both the digital and analog worlds. Specifically, the Committee has jurisdiction over matters related to privacy, the protection of personal information (including digital information), the security of data, and information technology, as well as false advertising, charitable solicitations, weights and measures, and consumer protection generally. The Committee is also responsible for oversight of the Department of Technology within the State's Government Operations Agency.

Given that jurisdiction, the policies in this bill are generally outside of this Committee's jurisdiction and there is nothing in this bill that raises concerns with the issues that are within its purview.

7) **Related legislation.** AB 391 (Jones-Sawyer), in this session, would 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. AB 391 is pending hearing in the Assembly Appropriations Committee.

SB 47 (Roth), in this session, would require an agency that receives a report of known or suspected child abuse to take specified actions, including, among other things, requiring an investigator to make contact with the person who made the report. SB 47 will be heard in the Senate Public Safety Committee today.

AB 1450 (Lackey, 2020) was similar to this bill except that grievance hearings would have been held by the law enforcement agency that forwarded CACI submission to DOJ. That bill failed passage in the Senate Public Safety Committee.

AB 2005 (Santiago, 2018) was also substantially similar to this bill. That bill, as discussed previously, was vetoed by Governor Brown.

AB 1911 (Lackey, 2017) would have required every county to establish an on-line database for specified agencies to track the reporting of substantiated allegations of child abuse and neglect by 2029. AB 1911 failed passage in this Committee.

AB 1707 (Ammiano, Chap. 848, Stats. 2012) removed non-reoffending minors from CACI after 10 years, and amended the CACI notice provisions.

AB 717 (Ammiano, Chap. 468, Stats. 2011) amended CACI provisions by including only substantiated reports and removing inconclusive and unfounded reports from CACI.

ARGUMENTS IN SUPPORT. According to the Los Angeles County Inter-agency Council on Child Abuse and Neglect (ICAN):

By removing law enforcement reports from the Index, a significant group of abusers who are outside the family are excluded from CACI. All cases where children are harmed in day care, in school settings, at playgrounds etc. will not be in the Index, thus eliminating important information should a clearance be requested on a person or provider who would be in a care giving role or on any subsequent allegations. The inability of law enforcement to submit reports to CACI has created a large gap in our ability to protect children from future harm.

ARGUMENTS IN OPPOSITION: In opposition, the Dependency Advocacy Center writes:

On behalf of DAC, we would like to express opposition to Assembly Bill 1544 (Lackey), which would restore the authorization for police or sheriffs' departments to report incidents of suspected child abuse to the Child Abuse Central Index (CACI). Law enforcement agencies' abuse of this power led to legislation several years ago that took away their authorization to report onto the CACI. The Legislature should not give them back the power they misused. Further, rather than addressing the concerns raised by the California State Auditor in 2022, AB 1544 simply worsens a broken system.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Inter-agency Council on Child Abuse and Neglect (ICAN)

Oppose Unless Amended

California Public Defenders Association (CPDA)

Opposition

ACLU California Action

Dependency Advocacy Center

Dependency Legal Services

Los Angeles Dependency Lawyers, INC.

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