

Date of Hearing: January 23, 2020

# ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1450 (Lackey) – As Amended January 6, 2020

Policy Committee:	Public Safety	Vote:	2 - 4
	Public Safety		6 - 0
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Urgency: No      State Mandated Local Program: No      Reimbursable: No

## SUMMARY:

This bill authorizes local law enforcement, on or after January 1, 2021, to forward a substantiated report of suspected child abuse or severe neglect to the Department of Justice (DOJ) for inclusion on the Child Abuse Central Index (CACI). This bill also requires local law enforcement to provide due process to any person submitted to the DOJ for inclusion on the CACI.

## FISCAL EFFECT:

- 1) Costs (GF/Sexual Habitual Offender Program) of approximately \$90,000 to the DOJ for additional program technicians to process an increased number of submissions to the CACI. DOJ estimates an increase of 2456 new incoming forms to inclusion in the CACI.
- 2) Likely non-reimbursable costs in the hundreds of thousands of dollars to local agencies to provide comprehensive due process to anyone reported to DOJ for inclusion in the CACI. This bill does not require law enforcement to report child abuse claims to the CACI and might not be viewed as a reimbursable state mandate by the Commission on State Mandates.

## COMMENTS:

- 1) **Purpose.** According to the author:

AB 1450 is necessary because law enforcement officials are often the first responders on the scene of child abuse claims. Without a complete database of information at the disposal of these officials, they are not seeing the full picture; similarly, because they are investigating claims of abuse, they should be able to submit their own report, irrespective of who has already submitted a report on behalf of the county or child welfare services.

- 2) **The CACI:** The CACI was created in 1965 as a centralized system for collecting reports of suspected child abuse. It is managed by the DOJ. County social services departments and the Department of Social Services (DSS) may report information to the CACI regarding substantiated complaints of abuse or neglect. DSS employees and social workers have access to law enforcement records regarding allegations of abuse and do not typically rely on the CACI as an investigative tool.

In 2011, the Legislature passed AB 717 (Ammiano), Chapter 468, Statutes of 2011, which amended the statutes governing the CACI. AB 717 limited the reports of abuse and neglect for inclusion in the CACI to only substantiated reports and provided for hearings for those seeking to have their name removed from the index. AB 717 also prohibited law enforcement from forwarding reports of abuse and neglect to the DOJ for inclusion in the CACI, leaving this function to child protective services departments. Before AB 717, multiple law enforcement agencies faced costly litigation over continued due process violations and there was considerable inconsistencies in when and under what circumstances a person was reported to the CACI. This bill proposes to reverse those provisions of AB 717 and allow law enforcement to refer substantiated complaints to the CACI.

- 3) **Due Process Requirements:** In *Humphries v. Los Angeles County* (9th Cir. 2009) 554 F.3d 1170, 1200, the Ninth Circuit held listing parents accused of child abuse on the CACI without notice and an opportunity to be heard violated the parents' due process rights. Law enforcement agencies responsible for reporting information to the CACI were sued on multiple occasions causing resulting in the Humphries decision. This bill proposes to allow law enforcement to submit "substantiated" complaints of child abuse to the CACI once again. However, it is unclear whether law enforcement has the resources or experience to properly provide sufficient due process or whether possibly innocent people will decline an administrative hearing for fear of waiving their right against self-incrimination if there is a pending criminal case.
- 4) **Veto Message on AB 2005 (Santiago), of the 2017-2018 Legislative Session:** In 2018, Governor Brown vetoed AB 2005, which was similar to this bill. The Governor stated:

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.

- 5) **Argument in Support:** According to the Los Angeles County Sheriff's Department:

According to the Department of Justice Child Abuse Central Index internet homepage, '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.' AB 1450 will ensure the Child Abuse Central Index continues to be a critical and useful tool to those charged with child abuse investigations.

- 6) **Argument in Opposition.** According to the American Civil Liberties Union:

... [T]he procedures proposed in AB 1450 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.