

ASSEMBLY THIRD READING

AB 1450 (Lackey)

As Amended January 6, 2020

Majority 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 Department of Justice (DOJ) for inclusion in the Child Abuse Central Index (CACI).

Major Provisions

- 1) 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.
- 2) Specifies that law enforcement can only forward reports of known or suspected child abuse or severe neglect made on or after January 1, 2021, or reports made before January 1, 2021 pertaining to open cases still being investigated on that date.
- 3) 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.
- 4) Requires a law enforcement department which chooses to forward reports of known or suspected abuse and neglect to DOJ for inclusion in CACI to adopt notification and grievance procedures.

COMMENTS:**According to the Author:**

"AB 1450 is back again because I know the severe consequences that ensue when we stand idly by and do nothing to protect the children of our communities. 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. This is a commonsense measure and a luxury that was afforded to law enforcement agencies for many years; it is time we reinstate this measure and equip law enforcement officials with everything they need to be safe and successful."

Arguments in Support:

According to the Los Angeles County Sheriff's Department, the sponsor of this bill, "As of January 1, 2012, law enforcement is prohibited from forwarding to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect. Since that time investigations of suspected child abuse or severe neglect, including sexual abuse, by, for example, day care providers, clergy, or babysitters have gone unreported.

"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.

"AB 1450 would delete the provision prohibiting a police or sheriff's department from forwarding a report of suspected child abuse to the Department of Justice. This bill would require 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 substantiated to the Department of Justice.

"Additionally, AB 1450 will clarify due process procedures for those who wish to contest their inclusion in the Child Abuse Central Index."

Arguments in Opposition:

According to the American Civil Liberties Union of California, "The existing restriction against law enforcement reporting to CACI was part of a set of statutory reforms intended to address the terrible due process violations and abuses that had occurred. CACI is a database of reported incidents of child abuse and neglect, maintained by the California Department of Justice. The information can be accessed by law enforcement agencies or other agencies as needed in conducting child abuse investigations, or by agencies for use in making decisions regarding hiring and licensing for positions involving supervision of children and decisions regarding prospective foster and adoptive parents. For much of the history of the program, it had no safeguards to ensure that the information included in the database was reliable, and gave the subjects of the reports no means of challenging the information. CACI became the subject of numerous legal challenges. In response to one such challenge, the Ninth Circuit Court of Appeals held that the CACI violated the due process clause of the Fourteenth amendment because the then-existing procedures for challenging allegations reported into the system were inadequate. *Humphries v. County of Los Angeles* (2009) 554 F.3d 1170, 1200.

"The bill puts in place notice and grievance procedures similar to those required under Department of Social Services (DSS) regulations applicable when child welfare agencies report individuals to the CACI. These procedures, like the DSS procedures, fail to provide adequate due process protections for persons who may be wrongly reported. Moreover, we note that where law enforcement is the agency submitting a report to CACI and also responsible for providing a grievance proceeding, there are heightened interests due to the possibility of criminal prosecution, and procedural problems not present when a child welfare agency is conducting the proceedings. Individuals accused of abuse will be put between a rock and a hard place, on the one hand facing the possibility that evidence they provide in a grievance proceeding might then be used to support a criminal case against them, and on the other hand knowing that if they fail to make their case for removal from the CACI database, they will face the numerous negative consequences of being listed as a child abuser for an indefinite period of time. We oppose the effort to re-authorize law enforcement to report incidents to CACI without providing adequate protections for the rights of those individuals who will be reported.

"The problems caused by the lack of adequate due process protections will be compounded if, as proposed in AB 1450, law enforcement agencies are allowed to submit reports onto CACI and are responsible for providing notice to those reported and grievance proceedings where requested. First, persons who are investigated by law enforcement for child abuse face potential

criminal prosecution – with the potential for consequences including loss of liberty. The procedural protections provided must be greater than those provided when the stakes are not as high – the DSS procedures, inadequate even where child welfare agency reports are at issue, are even less adequate in this context.

'Second, persons who receive notice from a law enforcement agency that they have been reported to CACI are placed in an untenable position. If a person chooses to challenge the report in a grievance proceeding held before an official from the law enforcement agency, the law enforcement agency may then take the evidence that person submits and use it in their investigation or to support criminal prosecution. But if the person recognizes this risk and chooses not to challenge the listing on CACI, or chooses not to testify in the hearing, that person may then unjustly be listed on CACI as a child abuser, with all of the consequences that flow from that, with no further opportunity to have the report removed from the database.

"Because of the grave dangers to the rights of those who are named in allegations reported to CACI, any change to allow law enforcement to resume submitting reports to the system must incorporate adequate due process protections. As described above, the 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."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee:

- 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.

VOTES:

ASM PUBLIC SAFETY: 6-0-2

YES: Jones-Sawyer, Lackey, Bauer-Kahan, Diep, Quirk, Santiago

ABS, ABST OR NV: Kamlager, Wicks

ASM APPROPRIATIONS: 17-0-1

YES: Gonzalez, Bigelow, Bloom, Brough, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas

ABS, ABST OR NV: Bonta

ASM PUBLIC SAFETY: 2-4-2

YES: Lackey, Bauer-Kahan

NO: Jones-Sawyer, Quirk, Santiago, Wicks

ABS, ABST OR NV: Diep, Kamlager-Dove

ASM PUBLIC SAFETY: 6-0-2

YES: Jones-Sawyer, Lackey, Bauer-Kahan, Quirk, Santiago, Wicks

ABS, ABST OR NV: Diep, Kamlager-Dove

UPDATED:

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