SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No:	AB 1450	**Hearing Date:**	August 7, 2020
Author:	Lackey		
Version:	June 24, 2020		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SC		

Subject: ***Child Abuse Central Index***

HISTORY

Source: Los Angeles County Sheriff's Department

Prior Legislation: AB 2005 (Santiago), 2018, vetoed
AB 1707 (Ammiano), Ch. 848, Stats. 2012
AB 717 (Ammiano), Ch. 468, Stats. 2011
AB 2442 (Keeley), Ch. 1064, Stats. 2002
AB 1447 (Granlund), 2000, never heard in Sen. Judiciary Comm.

Support: California State Sheriffs' Association; California Statewide Law Enforcement Association; Child Care Resource Center; Children's Bureau of Southern California; City of Palmdale; Los Angeles District Attorney's Office; Peace Officers' Research Association of California; SALVA Organization; San Bernardino County Sheriff's Department; Strength Based Community Change; approximately 1,000 private individuals

Opposition: A New Way of Life Re-entry Project; All of Us or None; American Civil Liberties Union of California; California Public Defenders Association (oppose unless amended); Community Legal Services in East Palo Alto; Community Works; Dependency Legal Services; Drug Policy Alliance; East Bay Community Law Center; East Bay Family Defenders; Family Reunification Equity & Empowerment; Inland Juvenile Panel Attorneys; Legal Aid at Work; Legal Services for Prisoners with Children; Los Angeles Dependency Lawyers, Inc.; Movement for Family Power; Root & Rebound; Rubicon Programs; San Jose State University Record Clearance Project; Starting Over Inc.; Underground Scholars; 2 private individuals

Assembly Floor Vote: 74 - 0

PURPOSE

The purpose of this bill is to authorize a police or sheriff's department receiving a report of, or investigating an open case for, known or suspected child abuse or severe neglect to forward a substantiated report of child abuse or severe neglect to the Department of Justice (DOJ) for inclusion in the Child Abuse Central Index (CACI).

Existing law requires mandated reporters to make reports of suspected child abuse or neglect 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. (Pen. Code, § 11165.9.)

Existing law 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, to report it immediately 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. (Pen. Code, § 11166, subd. (a).)

Existing law requires specified local agencies to send the DOJ reports of every case of child abuse or severe neglect that they investigate and determine to be substantiated. (Penal Code, § 11169, subd. (a).)

Existing law defines "substantiated" as "a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect … based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred. A substantiated report shall not include a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse or neglect." (Pen. Code, § 11165.12, subd. (b).)

Existing law directs the DOJ to maintain an index, referred to as the CACI, of all substantiated reports of child abuse and neglect submitted as specified. (Pen. Code § 11170, subds. (a)(1) and (a)(3).)

Existing law allows DOJ to disclose information contained in the 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, subd. (b).)

Existing law requires reporting agencies to provide written notification to a person reported to the CACI. (Pen. Code, § 11169, subd. (c).)

Existing law provide 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 the CACI has the right to hearing which comports with due process before the agency that requested the person's CACI inclusion. (Pen. Code, §11169, subds. (d) and (e).)

Existing law requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

Existing law requires the DOJ to remove a person's name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

Existing law provides that any person listed in CACI who has reached age 100 is to be removed from CACI. (Pen. Code, §11169, subd. (f).)

Existing law provides that any non-reoffending minor who is listed in CACI shall be removed after 10 years. (Pen. Code, § 11169, subd. (g).)

Existing law, as of January 1, 2012, prohibits a police or sheriff's department from forwarding to DOJ for inclusion in the CACI a report of any case it investigates of known or suspected child abuse or severe neglect. (Pen. Code, § 11169, subd. (b).)

This bill eliminates the provision in existing law that prohibits law enforcement from forwarding reports of abuse and neglect to the 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.

This bill states that a police or sheriff's department shall not forward a report to DOJ unless it has conducted an active investigation and determined that the report is substantiated.

This bill specifies 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.

This bill states that a police or sheriff's department that forwards a substantiated report of child abuse or severe neglect to DOJ is subject to all of the requirements imposed by the statutes governing CACI and requires the department adopt specified notification and grievance procedures.

This bill provides that a police or sheriff's department that forwards a report of known or suspected child abuse or severe neglect to DOJ shall adopt notification and grievance procedures that, at a minimum, include all of the following requirements:

1) Within five business days of submitting a person's name to the department for listing on the CACI, the police or sheriff's department shall send the following forms to the person's last known address;

    a) A notice of the CACI listing;

    b) A description of the grievance procedures for challenging a listing on CACI; and,

    c) A form to request a grievance hearing, including a referral number for the person's case.

2) The notice of the CACI listing shall contain the following information:

    a) Notice that the police or sheriff's department has completed an investigation of suspected child abuse or severe neglect, which the department has determined to be substantiated, and that the department has submitted the person's name to DOJ for listing on CACI;

    b) The victim's name, a brief description of the alleged abuse or severe neglect, and the date and location where the abuse or neglect occurred.

3) A person who requests a grievance hearing shall, within 30 calendar days of the date of notice of the CACI listing, send by mail, fax, or electronic mail, or deliver in person to the police or sheriff's department, a signed and completed request for grievance hearing form that includes all of the required information contained on the form. Failure to send the

completed request for grievance hearing form within the required time period constitutes a waiver of the right to a grievance hearing;

4) A completed Request for Grievance Hearing form shall include the referral number, name of the police or sheriff's department that investigated the abuse or neglect, the person's contact information and date of birth, the reason for grievance, and contact information for the person's attorney or representative, if any.

5) A grievance hearing shall be scheduled within 10 business days, and shall be held no later than 60 calendar days, after the date the request for a grievance hearing is received by the police or sheriff's department, unless otherwise agreed to by the person requesting the hearing and the police or sheriff's department.

   a) Notice of the date, time, and place of the grievance hearing shall be mailed by the police or sheriff's department to the person requesting the hearing at least 30 calendar days before the grievance hearing is scheduled, unless otherwise agreed to by the person and the police or sheriff's department

   b) The person requesting the hearing may have an attorney or other representative present at the hearing to assist the person

   c) Either party may request a continuance of the grievance hearing not to exceed 10 business days. Additional continuances or dismissal of the grievance hearing shall be granted with mutual agreement of both parties involved or for good cause.

   d) The police or sheriff's department may resolve a grievance hearing at any point by changing a finding of substantiated child abuse or severe neglect to a finding of not substantiated and notifying DOJ of the need to remove the person's name from the CACI

6) The grievance review officer assigned to conduct the grievance hearing shall be a staff member or other employee of the police or sheriff's department who was not directly involved in the decision to include the person's name in the CACI and who was not involved in the investigation of the action or finding that is the subject of the grievance hearing.

   a) The grievance review officer shall be capable of objectively reviewing the case information pertaining to the grievance and be able to conduct a fair and impartial hearing. A grievance review officer shall voluntarily disqualify themselves and withdraw from any proceeding in which the grievance review officer cannot give a fair and impartial hearing or in which the grievance review officer has an interest

   b) A party may request at any time prior to the close of the record, that the grievance review officer be disqualified upon the grounds that a fair and impartial hearing may not be held

   c) A request that a grievance review officer be disqualified shall be ruled upon by the grievance review officer prior to the close of the record. The grievance review officer's determination is subject to rehearing review and judicial review in the same manner and to the same extent as other determinations of the grievance review officer in the proceeding.

7) The person requesting the grievance hearing, or the person's attorney or representative, if any, and the police or sheriff's department shall be permitted, at least 10 days prior to the

hearing, to examine all records and relevant evidence that is not otherwise made confidential by law, that the opposing party intends to introduce at the grievance hearing.

a) The police or sheriff's department shall redact names and personal identifiers from the records and other evidence as required by law and to protect the identity and health and safety of a mandated reporter. The police or sheriff's department may also redact information regarding a mandated reporter's observations of the evidence indicating child abuse or severe neglect, if necessary to protect the identity and health and safety of the mandated reporter;

b) The police or sheriff's department shall release disclosable information to the person's attorney or representative only if the person has provided the police or sheriff's department with a signed consent to do so;

c) The person requesting the hearing and the police or sheriff's department shall exchange witness lists at least 10 days in advance of the grievance hearing;

d) Failure to disclose evidence or witness lists in advance of the grievance hearing may constitute grounds for the opposing party to object to consideration of the evidence or to object to allowing testimony of a witness during the hearing.

8) Each party and their attorney or representative, and witnesses while testifying, shall be the only persons authorized to be present during the grievance hearing unless both parties and the grievance review officer consent to the presence of other persons

9) All testimony given during the grievance hearing shall be given under oath or affirmation.

a) The grievance review officer has no subpoena power;

b) Each party may call witnesses to the hearing and may question witnesses called by the other party. The grievance review officer may limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression, or harassment;

c) The grievance review officer may permit the testimony or presence of a child at a hearing only if the child's participation in the grievance hearing is voluntary and the child is capable of providing voluntary consent.

i) The grievance review officer may prevent the presence or examination of a child at a grievance hearing for good cause, including, but not limited to, protecting the child from trauma or to protect the child's health, safety, or well-being.

ii) The grievance review officer may interview a child outside the presence of the parties in order to determine whether the participation of the child is voluntary or whether good cause exists for preventing the child from being present or testifying at the grievance hearing.

d) The police or sheriff's department officer who conducted the investigation that is the subject of the grievance hearing shall be present at the hearing if the officer is available to participate in the grievance hearing.

10) At the hearing, the police or sheriff's department shall first present its evidence supporting its actions or findings that are the subject of the grievance. The person who requested the grievance hearing may then provide evidence supporting the person's claim that the police or sheriff's department decision should be withdrawn or changed. The police or sheriff's department shall then be allowed to present rebuttal evidence in further support of its finding. Thereafter, the grievance review officer may, at the grievance review officer's discretion, allow the parties to submit any additional evidence as may be warranted to fully evaluate the matter under review.

11) The police or sheriff's department shall have the proceedings of the grievance review hearing audio recorded as part of the official administrative record.

    a) The police or sheriff's department shall maintain the administrative record of the grievance hearing;

    b) The police or sheriff's department shall keep possession of the recording and transcript, and its contents shall remain under seal, except that the person who requested the grievance hearing or the person's attorney or representative shall be entitled to inspect the recording and any related transcripts;

    c) If the person who requested the grievance hearing seeks to inspect the transcript, the cost for transcribing a recording of the hearing shall be assessed to that person; and,

    d) The police or sheriff's department shall file the administrative record with the court if any party seeks judicial review of the final decision of the grievance review officer.

12) At the conclusion of the grievance hearing, the grievance review officer shall make a determination based on the evidence presented at the grievance hearing, whether the allegation of child abuse or severe neglect is unfounded, substantiated, or inconclusive, as defined in CANRA.

    a) The grievance review officer shall render a written decision within 30 calendar days of the completion of the grievance hearing. The written decision shall contain a summary statement of the facts, the issues involved, findings, and the basis for the decision.

    b) A copy of the decision shall be sent to the person who requested the grievance hearing and the person's attorney or representative, if any;

    c) If the person who requested the grievance hearing chooses to challenge the written determination, the evidence and information disclosed at the grievance hearing may be part of an administrative record for a writ of mandate and shall be kept confidential; and,

    d) The grievance hearing administrative record shall be kept confidential, including if any of the parties request that it be filed with the court under seal.

13) The grievance hearing administrative record shall be retained for a length of time consistent with current law, regulations, or judicial order that governs the retention of the underlying record, but not less than one year from the decision date in any circumstance, and shall include all records accepted into evidence at the hearing.

This bill states that its provisions shall be known as Gabriel's Law.

This bill makes other conforming changes.

COMMENTS

1. Need for This Bill

According to the author of this bill:

> 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.

2. Background on CACI

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

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.

DOJ provides the following summary of CACI on its website:

> The Attorney General administers the Child Abuse Central Index (CACI), which was created by the Legislature in 1965 as a tool for state and local agencies to help protect the health and safety of California's children. Defined in Penal Code sections 11164 through 11174.31, these statutes are referred to as the "Child Abuse and Neglect Reporting Act" or "CANRA".
>
> Investigated reports of child abuse are forwarded to the CACI. 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 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. Information also is 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 the Child Abuse Central Index include:
>
> 1) Names and personal descriptors of the suspects and victims listed on reports;
> 2) Reporting agency that investigated the incident;
> 3) The name and/or number assigned to the case by the investigating agency; and
> 4) Type(s) of abuse investigated
>
> It is important to note that the effectiveness of the index is only as good as the quality of the information reported. Each reporting agency is required by law to forward to the DOJ a report of every child abuse incident it investigates, unless the incident is determined to be unfounded or general neglect. Each reporting agency is responsible for the accuracy, completeness and retention of the original reports. The CACI serves as a "pointer" back to the original submitting agency.

(See <http://oag.ca.gov/childabuse> [as of June 23, 2020].)

DOJ is not authorized to remove suspect records from CACI unless requested by the original reporting agency. (<https://oag.ca.gov/childabuse/selfinquiry> [as of June 23, 2020].)

3. Prior Legislation and Litigation

In 1963, the Legislature began requiring physicians to report suspected child abuse. (See *Smith v. M.D.* (2003) 105 Cal.App.4th 1169.) Two years later, the Legislature expanded the reporting scheme to require that instances of suspected abuse and neglect be referred to a central registry maintained by DOJ. In the early 1980s, the Legislature revised the then-existing laws and enacted the Child Abuse and Neglect Reporting Act (CANRA), which created the current version of CACI. These revisions did not require that listed individuals be notified of the listing, nor were individuals even able to determine whether they were listed in CACI.

In *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, the Court of Appeal held that a CACI listing implicates an individual's state constitutional right to familial and informational privacy, thus entitling the person to due process. (*Id.* at pp. 284-285.) Although CACI does not explicitly grant a hearing for a listed individual to challenge placement on the CACI, the statutory scheme contained an implicit right to a hearing. (*Id.* at p. 285.) The court declined to provide guidance on what procedures that hearing should include. The court merely stated that the county social services agency was required to afford a listed individual a "reasonable" opportunity to be heard. (*Id.* at p. 286.)

In *Humphries v. Los Angeles County* (9th Cir. 2009) 554 F.3d 1170, 1200, the Ninth Circuit held that an erroneous listing of parents who were accused of child abuse on the CACI without notice and an opportunity to be heard would violate 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.*) 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 the CACI. (See AB 717 (Ammiano), Chapter 468, Statutes of 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 the DOJ for inclusion in the CACI. The policy committee analyses for AB 717 do not specifically discuss why the statute was amended to prohibit law enforcement from forwarding reports of abuse and neglect to the DOJ. However, court documents filed in the *Humphries* case appear to indicate that the court declined to issue an injunction because the conduct that led to the plaintiffs' unlawful inclusion on CACI was prohibited by AB 717 which had gone into effect a few months prior and thus the issue became moot. (Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment or Summary Adjudication of Issues, SACV 03-0697, *Humphries v. County of Los Angeles et al*.)

A letter in opposition to this bill submitted by the plaintiffs' attorney who litigated the *Humphries* case provides:

> After *Humphries* was decided and while the case was on remand in the trial court, the statutory scheme that governs the Index, the Child Abuse and Neglect Reporting Act, Penal Code § 11164 et seq. (CANRA), was amended through AB 717 (Ammiano), effective January 1, 2012. AB 717's amendments discontinued law enforcement agencies' submissions of reports to the Index and specified that CACI-listed persons are entitled to a due process hearing. The Attorney General promoted and relied on those amendments to persuade the trial court in the Humphries' case that there was no longer any need to litigate the plaintiffs' claims for declaratory relief.

This bill would undo the prohibition enacted by AB 717 and would instead provide that a police or sheriff's department receiving a report of, or investigating an open case for which a report was made of known or suspected child abuse or severe neglect on or after January 1, 2021, may forward any such reports that are investigated and determined to be substantiated to DOJ for inclusion in CACI. This bill would require any police or sheriff's department that forwards such a report to DOJ to adopt specified notification and grievance procedures. These procedures are modeled after those followed by the Department of Social Services. However, because those procedures were put into place by a court order that pre-dates *Humphries*, the procedures do not resolve the due process issues in CACI raised in *Humphries*.

4. Notification and Grievance Procedures

Department of Social Services (DSS) child welfare staff will submit the names of perpetrators from "substantiated" referrals of abuse and/or neglect to the DOJ for inclusion in the CACI. A substantiated report means that a person within the agency that investigated the claim has determined that it is more likely than not that child abuse or neglect has occurred. (Pen. Code, § 11165.12, subd. (b).) Staff will inform those persons that their name has been submitted for listing on CACI, and provide them with information on the process to grieve/contest the listing.

In response to the settlement in the *Gomez v. Saenz* (2003) case, the court ordered all child welfare departments in California to notify individuals of their listing on the CACI, give

individuals the right to grieve the listing, and provide grievance hearings for those who challenge the listing. When submitting a person's name for listing on the CACI, the department is required to provide the person (by mail) with three forms – the completed Notice of Child Abuse Central Index Listing (SOC 832), the Request for Grievance Hearing (SOC 834), and the Grievance Procedures for Challenging Reference to the Child Abuse Central Index (SOC 833). The person has 30 days from the date of the letter to challenge their listing on CACI.

If an individual requests a grievance hearing, the hearing must occur within 10 business days, and no later than 60 calendar days from the request for a hearing. The complaining party is entitled to have an attorney or other representative assist him or her at the hearing. The grievance hearing officer must be a person not directly involved in the decision or in the investigation that is the subject of the hearing; nor can a coworker or direct supervisor of persons involved in making the finding be the hearing officer. The complaining party and his or her representatives must be permitted to examine all records and relevant evidence. The complaining party is entitled to a witness list. All testimony must be given under oath or affirmation. The proceedings must be audio recorded as part of the official administrative record. There must be a written decision, and the complainant may challenge that decision by means of a writ of mandate.

This bill requires a police or sheriff's department that chooses to submit a substantiated report of child abuse or severe neglect to DOJ for inclusion in CACI to adopt notification and grievance procedures that are largely consistent with DSS's policies and procedures on challenging inclusion in CACI. The law enforcement agency may submit for inclusion on CACI persons who the agency has an open investigation of child abuse. The bill's procedures require notice of the individual's inclusion on CACI and information on how to challenge law enforcement's findings. The designated hearing officer must be someone who is within the same law enforcement agency but did not investigate the allegations. The individual will receive a written decision after the hearing and may appeal the decision by writ of mandate.

The bill allows law enforcement to report individuals to CACI for whom the agency has an open investigation, thus statements made during a grievance hearing may be used to support a criminal case against the individual. Due to the potential to incriminate oneself at a CACI hearing, a person initially included on CACI may be discouraged from challenging their inclusion on the index.

Additionally, as stated in the Governor's veto message of prior similar legislation (see note 6 below), there are concerns about whether allowing law enforcement to include individuals on CACI when DSS is also investigating the allegation which could also lead to the individual's inclusion in CACI would lead to redundancies. If law enforcement receives a report of child abuse that may result in the child needing to be removed from the home, law enforcement will refer the case to DSS. A redundancy could occur if both agencies investigate the allegations of abuse and come to the conclusion that it is more likely than not that the abuse occurred, which is the standard for a substantiated report. On the other hand, it could also lead to inconsistencies if the two agencies come to different conclusions after the hearing – one agency could believe the person should remain on CACI while the other decides that they should be removed. Because DOJ can only remove an individual if the original listing agency requests the removal, the individual would remain on CACI because both agencies would have initially listed the individual and only one would be requesting their removal.

5. Impacts of Inclusion on CACI

An individual is placed on CACI based on a substantiated allegation of child abuse, not a criminal conviction. A substantiated allegation means that the agency who submits the individual's name for inclusion in CACI has made a determination that it is more likely than not that the child abuse occurred.

An individual's placement on CACI can negatively impact employment or licensing, volunteer activities, parental rights or custody of a child, or fostering or adopting a child because a background check by an authorized entity will reveal that the person is on CACI. (Pen. Code, § 11170, subd. (b).) CACI is also accessible by law enforcement agencies to investigate cases. (*Id*.) Once a person is included in CACI, if they are not successful at challenging their inclusion, they will remain in the index for life or until they reach the age of 100. A minor may also be placed on CACI although their listing will be removed ten years after the date of the incident that resulted in the CACI placement as long as the person is not again listed on CACI for a separate incident.

6. Veto of Prior Similar Legislation

AB 2005 (Santiago), of the 2017-18 Legislative Session, was substantially similar to this bill and was vetoed. According to the Governor's veto message:

> 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.

7. Argument 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 sever 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.

8. Argument in Opposition

According to the American Civil Liberties Union of California:

> This bill puts in place notice and grievance procedures similar to those required under the DSS regulations. Unfortunately, the proposed procedures, like the DSS procedures, fail to provide adequate due process protections or safeguards to ensure the accuracy of information 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.
>
> Finally, allowing each law enforcement agency to determine whether to report is an invitation to inconsistent application of the law. AB 1450 will allow each agency to determine whether it will submit reports onto the CACI, and each agency that chooses to do so will be required to adopt its own grievance procedures. Whether an individual is listed on the CACI will be determined by where that person happens to live. This will result in racial disparities in

reporting, as those who live in urban areas served by better-resourced police departments will be reported and those in areas served by smaller law enforcement agencies will not. Governor Brown foresaw this problem when he vetoed AB 2005 (2018), a bill closely similar to AB 1450, stating that it would "undoubtedly lead to inconsistent application across and within counties."

-- END –