

**Introduced by Senator Peace**January 23, 2002

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An act to amend Section 11169 of, and to add Sections 11169.5 and 11174.4 to, the Penal Code, relating to the Child Abuse Central Index.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1312, as introduced, Peace. Child Abuse Central Index.

Existing law creates the Child Abuse Central Index and requires specified agencies to forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse that is determined not to be unfounded. Existing law also requires that at the time the specified agency forwards a report in writing to the department that it shall also notify the known or suspected child abuser that he or she has been reported to the index.

This bill would require the specified agency to notify the known or suspected child abuser that he or she will be reported. The notice would also notify the person of his or her right to receive a copy of the report containing the allegation and to a hearing before entry of the report into the index. This bill would establish specified procedures for the applicant, the agency, and the department to follow with respect to the hearing process. Because this bill would impose additional duties on local agencies that investigate and report child abuse, it would impose a state-mandated local program.

This bill would require the department and specified agencies to review listing on the index that were entered prior to January 1, 1988, and to follow specified procedures to determine whether or not those listings should be purged from the index. This bill would also require that notice be sent to those suspects who remain in the index to notify them of their right to a hearing, as specified.



This bill would also create the Child Abuse and Neglect Reporting Act Task Force for the purpose of reviewing the act and for the purpose of evaluating how effective the Child Abuse Central Index is in protecting children and for determining what additional changes are needed in the manner in which the index operates. The task force would be chaired by a designee of the Attorney General and would consist of specified members. The task force would be required to report on its findings by June 30, 2003.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature hereby finds and declares the  
2 following:

3 (a) This act shall be known and may be cited as the Child Abuse  
4 Central Index Reform Act.

5 (b) The Legislature reiterates the importance of the role that  
6 state and local government officials serve in protecting children,  
7 which has been the primary goal of the Child Abuse Central Index  
8 (CACI) since it was initially formed in 1965.

9 (c) The Legislature intends to highlight the importance of  
10 ensuring the Due Process rights of persons accused and  
11 investigated for child abuse and to protect those who are falsely  
12 accused of those crimes.

13 (d) The Legislature finds that the changes in this act will  
14 enhance the state's ability to protect children by improving the  
15 accuracy of information on CACI.



1 (e) The CACI now contains the names of more than 900,000  
2 child abuse suspects, and the names of more than 1.1 million  
3 suspected child abuse victims. The vast majority of those suspects  
4 and victims have not received written notification of those listings,  
5 in part because written notification has only been required by state  
6 law for listings entered after January 1, 1998.

7 (f) The only existing method for an individual to contest an  
8 official finding of abuse or neglect and to have his or her name  
9 removed from CACI is to file a lawsuit against the state or its  
10 subsidiary agencies, which could be very expensive and not within  
11 the financial means of average citizens.

12 (g) The Department of Justice has been publicly criticized in  
13 1988 by the Auditor General, by a Department of Justice Advisory  
14 panel, and in subsequent lawsuits for having failed to honor Due  
15 Process rights of individuals listed on CACI.

16 SEC. 2. Section 11169 of the Penal Code is amended to read:

17 11169. (a) An agency specified in Section 11165.9 shall  
18 forward to the Department of Justice a report in writing of every  
19 case it investigates of known or suspected child abuse or severe  
20 neglect which is determined not to be unfounded, other than cases  
21 coming within subdivision (b) of Section 11165.2. An agency shall  
22 not forward a report to the Department of Justice unless it has  
23 conducted an active investigation and determined that the report  
24 is not unfounded, as defined in Section 11165.12. If a report has  
25 previously been filed which subsequently proves to be unfounded,  
26 the Department of Justice shall be notified in writing of that fact  
27 and shall not retain the report. The reports required by this section  
28 shall be in a form approved by the Department of Justice and may  
29 be sent by fax or electronic transmission. An agency specified in  
30 Section 11165.9 receiving a written report from another agency  
31 specified in Section 11165.9 shall not send that report to the  
32 Department of Justice.

33 (b) At the time an agency specified in Section 11165.9 forwards  
34 a report in writing to the Department of Justice pursuant to  
35 subdivision (a), the agency shall also notify in writing the known  
36 or suspected child abuser that he or she ~~has been~~ *will be* reported  
37 to the Child Abuse Central Index. The notice required by this  
38 section shall be in a form approved by the Department of Justice  
39 *and shall notify that person of his or her right to receive a copy of*



1 *the report containing the allegation and to a hearing before entry*  
2 *into the index.*

3 *(1) The agency shall send the notice prescribed in subdivision*  
4 *(b), by first-class registered mail no more than 30 days after*  
5 *completion of the investigation by an agency specified in Section*  
6 *11165.9.*

7 *(2) A request for a hearing on the proposed finding must be*  
8 *received by the Department of Justice within 14 days after receipt*  
9 *of the notice.*

10 *(3) The Department of Justice shall not disclose any*  
11 *information related to the investigation of the allegation except as*  
12 *provided in Section 11167.5.*

13 *(4) If a request for a hearing is made pursuant to subdivision*  
14 *(b), upon receipt of the request, the department shall forward the*  
15 *request to the person or agency that furnished the questioned*  
16 *report. The Department of Justice shall provide an opportunity for*  
17 *the accused person to provide written or verbal information to*  
18 *support the position that the agency should amend the report. The*  
19 *person or agency shall, within 30 days of receipt of the request for*  
20 *a hearing, review its information and forward to the department*  
21 *the results of the review.*

22 *(5) If the agency finds that there is a material error in the report*  
23 *that makes the report unfounded, it shall correct its record and*  
24 *shall inform the department and a hearing shall not be held. The*  
25 *department shall inform the applicant of its correction under this*  
26 *subdivision within 30 days. The department and the agency shall*  
27 *also notify those persons or agencies to which the incorrect*  
28 *information has been disseminated and which have been*  
29 *specifically requested by the applicant to receive notification of the*  
30 *correction of the record, and the applicant shall be informed that*  
31 *the notification has been given.*

32 *(6) If the agency does not determine that the report is*  
33 *unfounded, the matter shall be referred for administrative*  
34 *adjudication in accordance with Chapter 5 (commencing with*  
35 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*  
36 *Code for a determination of whether inaccuracy or incompleteness*  
37 *exists in the report. This adjudication shall take place within 60*  
38 *days from the applicant's request for a hearing. The agency from*  
39 *which the questioned report originated shall be the respondent in*  
40 *the hearing and shall have the burden of proof. During the hearing,*



1 *the fact that there is a family court finding of abuse or neglect*  
2 *against the subject in regard to an allegation contained in the*  
3 *report shall create an irrebuttable presumption that the allegation*  
4 *is substantiated by some credible evidence.*

5 (7) *If a material inaccuracy or incompleteness is found in the*  
6 *information present in the report, the agency that reported the*  
7 *information shall be directed to correct its records accordingly,*  
8 *and to inform the department. The department and the agency*  
9 *shall also notify those persons or agencies to which the incorrect*  
10 *information has been given and that have been specifically*  
11 *requested by the applicant to receive notification of the correction*  
12 *of the record, and the applicant shall be informed that the*  
13 *notification has been given. Judicial review of the decision shall*  
14 *be governed by Section 11523 of the Government Code. The*  
15 *applicant shall be informed of the decision within 30 days of its*  
16 *issuance in accordance with Section 11518 of the Government*  
17 *Code. The*

18 (c) *The requirements of this subdivision shall apply with*  
19 *respect to reports forwarded to the department on or after the date*  
20 *on which this subdivision becomes operative.*

21 ~~(e)~~

22 (d) *Agencies shall retain child abuse or neglect investigative*  
23 *reports that result in a report filed with the Department of Justice*  
24 *pursuant to subdivision (a) for the same period of time that the*  
25 *information is required to be maintained on the Child Abuse*  
26 *Central Index pursuant to this section. Nothing in this section*  
27 *precludes an agency from retaining the reports for a longer period*  
28 *of time if required by law.*

29 ~~(d)~~

30 (e) *The immunity provisions of Section 11172 shall not apply*  
31 *to the submission of a report by an agency pursuant to this section.*  
32 *However, nothing in this section shall be construed to alter or*  
33 *diminish any other immunity provisions of state or federal law.*

34 SEC. 3. Section 11169.5 is added to the Penal Code, to read:

35 11169.5. (a) *The Department of Justice shall review all*  
36 *listings on the Child Abuse Central Index that were entered prior*  
37 *to January 1, 1988, and compare its listings with the child*  
38 *protective agency or law enforcement agency that initiated the*  
39 *listing to determine whether the underlying investigative files still*  
40 *exist. For any listing on the index in which the underlying*



1 investigative files are deemed lost or destroyed, the listing shall be  
2 immediately purged from the index.

3 (b) If the files underlying the index listing are found to exist,  
4 the department and the initial investigating agency shall jointly  
5 review each file to determine whether there is probable cause to  
6 determine that the suspect engaged in the alleged abuse. If  
7 probable cause is not found, the listing shall be immediately  
8 purged from the index.

9 (c) For listings that the department and underlying agency  
10 deem that there is probable cause that the suspect engaged in the  
11 alleged abuse, written notification of the listing shall be mailed by  
12 registered mail to the suspect’s last known address. The notice  
13 shall inform the suspect of his or her right to a hearing to contest  
14 the entry of his or her name on the index. The request for a hearing  
15 must be received by the department within 90 days from the receipt  
16 of the notice. The burden of proof in the hearing shall be on the  
17 child protective service or state agency that investigated the report.

18 SEC. 4. Section 11174.4 is added to the Penal Code, to read:

19 11174.4. (a) There is hereby created the Child Abuse and  
20 Neglect Reporting Act Task Force, for the purpose of reviewing  
21 the act and answering the following:

22 (1) How valuable the Child Abuse Central Index is in  
23 protecting children.

24 (2) What changes, if any, are needed in the manner in which the  
25 Child Abuse Central Index operates.

26 (b) The task force shall be chaired by a designee of the Attorney  
27 General.

28 (c) The members of the task force shall serve at the pleasure of  
29 the chairperson, without compensation, except for the  
30 reimbursement of necessary expenses.

31 (d) The task force shall consist of the following  
32 representatives:

33 (1) Two representatives from the Department of Justice, not  
34 including the chairperson.

35 (2) One representative from the State Department of Social  
36 Services.

37 (3) One representative from the County Welfare Directors’  
38 Association.

39 (4) One representative from the California State Child Death  
40 Review Council.



1 (5) One representative from Prevent Child Abuse California.

2 (6) Two representatives from local law enforcement, one who  
3 is nominated by the California State Sheriffs Association and who  
4 is one nominated by the California Police Chiefs Association.

5 (7) Two representatives from recognized organizations in  
6 privacy advocacy, civil liberties advocacy, or legal aid, one who  
7 is appointed by the Speaker of the Assembly and one who is  
8 appointed by the Senate Committee on Rules.

9 (8) Two members of the public, one who is appointed by the  
10 Speaker of the Assembly and one who is appointed by the Senate  
11 Committee on Rules.

12 (9) Two representatives appointed by the Governor.

13 (e) The Department of Justice shall provide staff and support  
14 for the task force.

15 (f) On or before June 30, 2003, the task force shall report its  
16 findings and recommendations to the Governor, the Attorney  
17 General, the Speaker of the Assembly, and the Senate Committee  
18 on Rules.

19 SEC. 5. Notwithstanding Section 17610 of the Government  
20 Code, if the Commission on State Mandates determines that this  
21 act contains costs mandated by the state, reimbursement to local  
22 agencies and school districts for those costs shall be made pursuant  
23 to Part 7 (commencing with Section 17500) of Division 4 of Title  
24 2 of the Government Code. If the statewide cost of the claim for  
25 reimbursement does not exceed one million dollars (\$1,000,000),  
26 reimbursement shall be made from the State Mandates Claims  
27 Fund.

