

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 717

Introduced by Assembly Member Ammiano

February 17, 2011

An act to amend ~~Section 11169~~ *Sections 11169 and 11170* of the Penal Code, relating to the Child Abuse Central Index.

LEGISLATIVE COUNSEL'S DIGEST

AB 717, as amended, Ammiano. Child Abuse Central Index.

Existing law, subject to exceptions, requires specified local agencies to forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded, for purposes of inclusion by the department in the Child Abuse Central Index (CACI).

Existing law prohibits those agencies from forwarding reports to the department unless the agency has conducted an active investigation and determined that the report is not unfounded. Existing law further requires, if a report has previously been filed which subsequently proves to be unfounded, the department be notified of that fact and the department shall not retain the report.

This bill would instead apply those provisions to reports that are substantiated. The bill would also provide that the Department of Justice, in responding to regulatory requests made by the State Department of Social Services, a county welfare department, a Court Appointed Special Advocate program, a tribal court or a tribal child welfare agency of a tribe or consortium of tribes, an out of state agency, or any other licensing agency representative, shall only provide reports from the Child Abuse Central Index (CACI) of persons notified of the

listing in the CACI and who were offered a hearing on or after March 2008. The bill would further require that the department, in responding to requests from law enforcement or county probation, provide information from the CACI for investigative purposes only and the information may not be used in any other capacity.

Existing law charges the Department of Justice with maintaining CACI and the index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded.

This bill would instead provide that only information from reports that are reported as substantiated would be filed, and all other determinations would be removed from the centralized list. The bill would require the department to furnish a report semiannually, as prescribed by the Attorney General, to authorized agencies required to report instances of known or suspected child abuse or severe neglect for the purpose of validating the accuracy, completeness, and retention of child abuse reports maintained in the CACI that were previously submitted by their agency. The bill would require the agencies to notify the department, within 60 calendar days from the date of the report, of the CACI records that no longer meet statutory requirements for retention in the repository, and if an agency fails to notify the department within 60 calendar days, the records contained in the report shall be deemed incomplete and would be deleted. The bill would also provide that if an agency fails to accurately maintain and update its previously submitted reports the agency may be held liable and responsible for any consequential action resulting from a violation of these provisions.

By imposing additional duties on local government agencies, this bill would impose a state-mandated local program.

Existing law requires the Department of Justice to make information in the CACI available to investigative agencies or probation officers, or court investigators, in connection with the placement of children who are subject to the jurisdiction of the courts. Existing law provides that upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the department, the agency or court investigator shall notify, in writing, the person listed in the CACI that he or she is in the index, and requires the notification to include the name of the reporting agency and the date of the report.

This bill would delete that notification requirement.

The bill would make additional conforming changes.

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.

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.

~~This bill would make a technical, nonsubstantive change to those provisions:~~

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

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

1 SECTION 1. Section 11169 of the Penal Code is amended to
2 read:
3 11169. (a) An agency specified in Section 11165.9 shall
4 forward to the Department of Justice a report in writing of every
5 case it investigates of known or suspected child abuse or severe
6 neglect that is determined ~~not to be unfounded~~ *to be substantiated*,
7 other than cases coming within subdivision (b) of Section 11165.2.
8 An agency shall not forward a report to the Department of Justice
9 unless it has conducted an active investigation and determined that
10 the report is ~~not unfounded~~ *substantiated*, as defined in Section
11 11165.12. If a report has previously been filed which subsequently
12 proves to be ~~unfounded~~ *not substantiated*, the Department of Justice
13 shall be notified in writing of that fact and shall not retain the
14 report. The reports required by this section shall be in a form
15 approved by the Department of Justice and may be sent by fax or
16 electronic transmission. An agency specified in Section 11165.9
17 receiving a written report from another agency specified in Section
18 11165.9 shall not send that report to the Department of Justice.
19 (b) *The Department of Justice shall make available information*
20 *on the Child Abuse Central Index (CACI) as follows:*
21 (1) *Regulatory requests made by the State Department of Social*
22 *Services, a county welfare department, a Court Appointed Special*
23 *Advocate program, a tribal court or tribal child welfare agency*
24 *of a tribe or consortium of tribes, an out-of-state agency, or any*
25 *other licensing agency representative shall only receive reports*

1 of persons notified of the listing in the CACI and offered a hearing
2 on or after March 1, 2008.

3 (2) Requests made by law enforcement or county probation
4 shall receive information for investigative purposes only and the
5 information may not be used in any other capacity.

6 ~~(b)~~

7 (c) At the time an agency specified in Section 11165.9 forwards
8 a report in writing to the Department of Justice pursuant to
9 subdivision (a), the agency shall also notify in writing the known
10 or suspected child abuser that he or she has been reported to the
11 Child Abuse Central Index. The notice required by this section
12 shall be in a form approved by the Department of Justice. The
13 requirements of this subdivision shall apply with respect to reports
14 forwarded to the department on or after the date on which this
15 subdivision becomes operative.

16 ~~(e) Agencies shall retain child abuse or neglect investigative
17 reports that result in a report filed with the Department of Justice
18 pursuant to subdivision (a) for the same period of time that the
19 information is required to be maintained on the Child Abuse
20 Central Index pursuant to this section and subdivision (a) of Section
21 11170. Nothing in this section precludes an agency from retaining
22 the reports for a longer period of time if required by law.~~

23 (d) The immunity provisions of Section 11172 shall not apply
24 to the submission of a report by an agency pursuant to this section.
25 However, nothing in this section shall be construed to alter or
26 diminish any other immunity provisions of state or federal law.

27 SEC. 2. Section 11170 of the Penal Code is amended to read:

28 11170. (a) (1) The Department of Justice shall maintain an
29 index of all reports of child abuse and severe neglect submitted
30 pursuant to Section 11169. The index shall be continually updated
31 by the department and shall not contain any reports that are
32 determined to be ~~unfounded~~ not substantiated. The department
33 may adopt rules governing recordkeeping and reporting pursuant
34 to this article.

35 (2) The department shall act only as a repository of reports of
36 suspected child abuse and severe neglect to be maintained in the
37 Child Abuse Central Index (CACI) pursuant to paragraph (1). The
38 submitting agencies are responsible for the accuracy, completeness,
39 and retention of the reports described in this section. The
40 department shall be responsible for ensuring that the ~~Child Abuse~~

1 Central Index CACI accurately reflects the report it receives from
2 the submitting agency.

3 ~~(3) Information from an inconclusive or unsubstantiated report~~
4 ~~filed pursuant to subdivision (a) of Section 11169 shall be deleted~~
5 ~~from the Child Abuse Central Index after 10 years if no subsequent~~
6 ~~report concerning the same suspected child abuser is received~~
7 ~~within that time period. If a subsequent report is received within~~
8 ~~that 10-year period, information from any prior report, as well as~~
9 ~~any subsequently filed report, shall be maintained on the Child~~
10 ~~Abuse Central Index for a period of 10 years from the time the~~
11 ~~most recent report is received by the department.~~

12 *(3) Only information from reports that are reported as*
13 *substantiated shall be filed pursuant to paragraph (1), and all*
14 *other determinations shall be removed from the centralized list.*
15 *The department shall furnish a report semiannually, as prescribed*
16 *by the Attorney General, to authorized agencies required to report*
17 *instances of known or suspected child abuse or severe neglect*
18 *pursuant to Section 11169 for the purpose of validating the*
19 *accuracy, completeness, and retention of child abuse reports*
20 *maintained in the CACI previously submitted by their agency. In*
21 *order to maintain the integrity of the CACI, the agency shall notify*
22 *the department, within 60 calendar days from the date of the report,*
23 *of the CACI records that no longer meet statutory requirements*
24 *for retention in the repository and those records shall be deleted*
25 *from the CACI. Otherwise, if an agency fails to notify the*
26 *department within 60 calendar days, the records contained in the*
27 *report shall be deemed incomplete, and, therefore, deleted from*
28 *the CACI. Additionally, if an agency fails to accurately maintain*
29 *and update its previously submitted reports for CACI entry and*
30 *report that information to the department, that agency may be held*
31 *liable and responsible for any consequential action resulting from*
32 *a violation of this section, notwithstanding Section 11172. The*
33 *department shall remain harmless and will not be held as a party*
34 *liable for any violation of the agency's responsibility to notify the*
35 *department to delete CACI reports previously submitted as required*
36 *in this section.*

37 *(b) The provisions of subdivision (b) of Section 11169 apply to*
38 *any information provided pursuant to this subdivision.*

39 ~~(b) (1)~~

1 (1) The Department of Justice shall immediately notify an
2 agency that submits a report pursuant to Section 11169, or a
3 prosecutor who requests notification, of any information maintained
4 pursuant to subdivision (a) that is relevant to the known or
5 suspected instance of child abuse or severe neglect reported by the
6 agency. The agency shall make that information available to the
7 reporting health care practitioner who is treating a person reported
8 as a possible victim of known or suspected child abuse. The agency
9 shall make that information available to the reporting child
10 custodian, Child Abuse Prevention and Treatment Act (~~CAPTA~~)
11 guardian ad litem appointed under Rule 5.662 of the California
12 Rules of Court, or counsel appointed under Section 317 or 318 of
13 the Welfare and Institutions Code, or the appropriate licensing
14 agency, if he or she or the licensing agency is handling or
15 investigating a case of known or suspected child abuse or severe
16 neglect.

17 (2) When a report is made pursuant to subdivision (a) of Section
18 11166, or Section 11166.05, the investigating agency, upon
19 completion of the investigation or after there has been a final
20 disposition in the matter, shall inform the person required or
21 authorized to report of the results of the investigation and of any
22 action the agency is taking with regard to the child or family.

23 (3) The Department of Justice shall make *information from the*
24 *CACI* available to a law enforcement agency, ~~county welfare~~
25 ~~department, or county probation department~~ that is conducting a
26 child abuse investigation ~~relevant information contained in the~~
27 ~~index~~ *only for investigative purposes pursuant to paragraph (2)*
28 *of subdivision (b) of Section 11169.*

29 (4) The department shall make available to the State Department
30 of Social Services, or to any county licensing agency that has
31 contracted with the state for the performance of licensing duties,
32 or to a tribal court or tribal child welfare agency of a tribe or
33 consortium of tribes that has entered into an agreement with the
34 state pursuant to Section 10553.1 of the Welfare and Institutions
35 Code, information regarding a known or suspected child abuser
36 maintained pursuant to this section and subdivision (a) of Section
37 11169 concerning any person who is an applicant for licensure or
38 any adult who resides or is employed in the home of an applicant
39 for licensure or who is an applicant for employment in a position
40 having supervisory or disciplinary power over a child or children,

1 or who will provide 24-hour care for a child or children in a
2 residential home or facility, pursuant to Section 1522.1 or 1596.877
3 of the Health and Safety Code, or Section 8714, 8802, 8912, or
4 9000 of the Family Code.

5 (5) The Department of Justice shall make available to a Court
6 Appointed Special Advocate program that is conducting a
7 background investigation of an applicant seeking employment
8 with the program or a volunteer position as a Court Appointed
9 Special Advocate, as defined in Section 101 of the Welfare and
10 Institutions Code, information contained in the index regarding
11 known or suspected child abuse by the applicant.

12 (6) For purposes of child death review, the Department of Justice
13 shall make available to the chairperson, or the chairperson's
14 designee, for each county child death review team, or the State
15 Child Death Review Council, information *for investigative*
16 *purposes only that is* maintained in the ~~Child Abuse Central Index~~
17 *CACI* pursuant to subdivision (a) relating to the death of one or
18 more children and any prior child abuse or neglect investigation
19 reports maintained involving the same victims, siblings, or
20 suspects. Local child death review teams may share any relevant
21 information regarding case reviews involving child death with
22 other child death review teams.

23 (7) The department shall make available to investigative
24 agencies or probation officers, or court investigators acting
25 pursuant to Section 1513 of the Probate Code, responsible for
26 placing children or assessing the possible placement of children
27 pursuant to Article 6 (commencing with Section 300), Article 7
28 (commencing with Section 305), Article 10 (commencing with
29 Section 360), or Article 14 (commencing with Section 601) of
30 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
31 Code, Article 2 (commencing with Section 1510) or Article 3
32 (commencing with Section 1540) of Chapter 1 of Part 2 of Division
33 4 of the Probate Code, information regarding a known or suspected
34 child abuser contained in the index concerning any adult residing
35 in the home where the child may be placed, when this information
36 is requested for purposes of ensuring that the placement is in the
37 best interest of the child. ~~Upon receipt of relevant information~~
38 ~~concerning child abuse or neglect investigation reports contained~~
39 ~~in the index from the Department of Justice pursuant to this~~
40 ~~subdivision, the agency or court investigator shall notify, in writing,~~

1 ~~the person listed in the Child Abuse Central Index that he or she~~
2 ~~is in the index. The notification shall include the name of the~~
3 ~~reporting agency and the date of the report.~~

4 (8) The Department of Justice shall make available to a
5 government agency conducting a background investigation
6 pursuant to Section 1031 of the Government Code of an applicant
7 seeking employment as a peace officer, as defined in Section 830,
8 information regarding a known or suspected child abuser
9 maintained pursuant to this section concerning the applicant.

10 (9) The Department of Justice shall make available to a county
11 child welfare agency or delegated county adoption agency, as
12 defined in Section 8515 of the Family Code, conducting a
13 background investigation, or a government agency conducting a
14 background investigation on behalf of one of those agencies,
15 information regarding a known or suspected child abuser
16 maintained pursuant to this section and subdivision (a) of Section
17 11169 concerning any applicant seeking employment or volunteer
18 status with the agency who, in the course of his or her employment
19 or volunteer work, will have direct contact with children who are
20 alleged to have been, are at risk of, or have suffered, abuse or
21 neglect.

22 (10) (A) Persons or agencies, as specified in subdivision (b),
23 if investigating a case of known or suspected child abuse or neglect,
24 or the State Department of Social Services or any county licensing
25 agency pursuant to paragraph (4), or a Court Appointed Special
26 Advocate (CASA) program conducting a background investigation
27 for employment or volunteer candidates pursuant to paragraph (5),
28 or an investigative agency, probation officer, or court investigator
29 responsible for placing children or assessing the possible placement
30 of children pursuant to paragraph (7), or a government agency
31 conducting a background investigation of an applicant seeking
32 employment as a peace officer pursuant to paragraph (8), or a
33 county child welfare agency or delegated county adoption agency
34 conducting a background investigation of an applicant seeking
35 employment or volunteer status who, in the course of his or her
36 employment or volunteer work, will have direct contact with
37 children who are alleged to have been, are at risk of, or have
38 suffered, abuse or neglect, pursuant to paragraph (9), to whom
39 disclosure of any information maintained pursuant to subdivision
40 (a) is authorized, are responsible for obtaining the original

1 investigative report from the reporting agency, and for drawing
2 independent conclusions regarding the quality of the evidence
3 disclosed, and its sufficiency for making decisions regarding
4 investigation, prosecution, licensing, placement of a child,
5 employment or volunteer positions with a CASA program, or
6 employment as a peace officer.

7 (B) ~~If Child Abuse Central Index CACI~~ information is requested
8 by an agency for the temporary placement of a child in an
9 emergency situation pursuant to Article 7 (commencing with
10 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
11 and Institutions Code, the department is exempt from the
12 requirements of Section 1798.18 of the Civil Code if compliance
13 would cause a delay in providing an expedited response to the
14 agency's inquiry and if further delay in placement may be
15 detrimental to the child.

16 (11) (A) Whenever information contained in the Department
17 of Justice files is furnished as the result of an application for
18 employment or licensing or volunteer status pursuant to paragraph
19 (4), (5), (8), or (9), the Department of Justice may charge the person
20 or entity making the request a fee. The fee shall not exceed the
21 reasonable costs to the department of providing the information.
22 The only increase shall be at a rate not to exceed the legislatively
23 approved cost-of-living adjustment for the department. In no case
24 shall the fee exceed fifteen dollars (\$15).

25 (B) All moneys received by the department pursuant to this
26 section to process trustline applications for purposes of Chapter
27 3.35 (commencing with Section 1596.60) of Division 2 of the
28 Health and Safety Code shall be deposited in a special account in
29 the General Fund that is hereby established and named the
30 Department of Justice Child Abuse Fund. Moneys in the fund shall
31 be available, upon appropriation by the Legislature, for expenditure
32 by the department to offset the costs incurred to process trustline
33 automated child abuse or neglect system checks pursuant to this
34 section.

35 (C) All moneys, other than those described in subparagraph (B),
36 received by the department pursuant to this paragraph shall be
37 deposited in a special account in the General Fund which is hereby
38 created and named the Department of Justice Sexual Habitual
39 Offender Fund. The funds shall be available, upon appropriation
40 by the Legislature, for expenditure by the department to offset the

1 costs incurred pursuant to Chapter 9.5 (commencing with Section
2 13885) and Chapter 10 (commencing with Section 13890) of Title
3 6 of Part 4, and the DNA and Forensic Identification Data Base
4 and Data Bank Act of 1998 (Chapter 6 (commencing with Section
5 295) of Title 9 of Part 1), and for maintenance and improvements
6 to the statewide Sexual Habitual Offender Program and the
7 California DNA offender identification file (CAL-DNA) authorized
8 by Chapter 9.5 (commencing with Section 13885) of Title 6 of
9 Part 4 and the DNA and Forensic Identification Data Base and
10 Data Bank Act of 1998 (Chapter 6 (commencing with Section 295)
11 of Title 9 of Part 1).

12 (c) (1) The Department of Justice shall make available to any
13 agency responsible for placing children pursuant to Article 7
14 (commencing with Section 305) of Chapter 2 of Part 1 of Division
15 2 of the Welfare and Institutions Code, upon request, relevant
16 information concerning child abuse or neglect reports contained
17 in the index, when making a placement with a responsible relative
18 pursuant to Sections 281.5, 305, and 361.3 of the Welfare and
19 Institutions Code. Upon receipt of relevant information concerning
20 child abuse or neglect reports contained in the index from the
21 Department of Justice pursuant to this subdivision, the agency
22 shall also notify in writing the person listed in the ~~Child Abuse~~
23 ~~Central Index~~ CACI that he or she is in the index. The notification
24 shall include the location of the original investigative report and
25 the submitting agency. The notification shall be submitted to the
26 person listed at the same time that all other parties are notified of
27 the information, and no later than the actual judicial proceeding
28 that determines placement.

29 ~~If Child Abuse Central Index~~

30 (2) *If* information is requested by an agency for the placement
31 of a child with a responsible relative in an emergency situation
32 pursuant to Article 7 (commencing with Section 305) of Chapter
33 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the
34 department is exempt from the requirements of Section 1798.18
35 of the Civil Code if compliance would cause a delay in providing
36 an expedited response to the child protective agency's inquiry and
37 if further delay in placement may be detrimental to the child.

38 (d) The department shall make available any information
39 maintained pursuant to subdivision (a) to out-of-state law
40 enforcement agencies conducting investigations of known or

1 suspected child abuse or neglect only when an agency makes the
2 request for information in writing and on official letterhead, or as
3 designated by the department, identifying the suspected abuser or
4 victim by name and date of birth or approximate age. The request
5 shall be signed by the department supervisor of the requesting law
6 enforcement agency. The written requests shall cite the out-of-state
7 statute or interstate compact provision that requires that the
8 information contained within these reports shall be disclosed only
9 to law enforcement, prosecutorial entities, or multidisciplinary
10 investigative teams, and shall cite the safeguards in place to prevent
11 unlawful disclosure of any confidential information provided by
12 the requesting state or the applicable interstate compact provision.

13 (e) (1) The department shall make available to an out-of-state
14 agency, for purposes of approving a prospective foster or adoptive
15 parent in compliance with the Adam Walsh Child Protection and
16 Safety Act of 2006 (~~P.L.~~ *Public Law* 109-248), information
17 regarding a known or suspected child abuser maintained pursuant
18 to subdivision (a) concerning the prospective foster or adoptive
19 parent, and any other adult living in the home of the prospective
20 foster or adoptive parent. The department shall make that
21 information available only when the out-of-state agency makes
22 the request indicating that continual compliance will be maintained
23 with the requirement in paragraph (20) of subdivision (a) of Section
24 671 of Title 42 of the United States Code that requires the state to
25 have in place safeguards to prevent the unauthorized disclosure of
26 information in any child abuse and neglect registry maintained by
27 the state and prevent the information from being used for a purpose
28 other than the conducting of background checks in foster or
29 adoption placement cases.

30 (2) With respect to any information provided by the department
31 in response to the out-of-state agency's request, the out-of-state
32 agency is responsible for obtaining the original investigative report
33 from the reporting agency, and for drawing independent
34 conclusions regarding the quality of the evidence disclosed and
35 its sufficiency for making decisions regarding the approval of
36 prospective foster or adoptive parents.

37 (3) (A) Whenever information contained in the index is
38 furnished pursuant to this subdivision, the department shall charge
39 the out-of-state agency making the request a fee. The fee shall not
40 exceed the reasonable costs to the department of providing the

1 information. The only increase shall be at a rate not to exceed the
2 legislatively approved cost-of-living adjustment for the department.
3 In no case shall the fee exceed fifteen dollars (\$15).

4 (B) All moneys received by the department pursuant to this
5 subdivision shall be deposited in the Department of Justice Child
6 Abuse Fund, established under subparagraph (B) of paragraph (11)
7 of subdivision (b). Moneys in the fund shall be available, upon
8 appropriation by the Legislature, for expenditure by the department
9 to offset the costs incurred to process requests for information
10 pursuant to this subdivision.

11 (f) (1) Any person may determine if he or she is listed in the
12 ~~Child Abuse Central Index~~ CACI by making a request in writing
13 to the Department of Justice. The request shall be notarized and
14 include the person’s name, address, date of birth, and either a social
15 security number or a California identification number. Upon receipt
16 of a notarized request, the Department of Justice shall make
17 available to the requesting person information identifying the date
18 of the report and the submitting agency. The requesting person is
19 responsible for obtaining the investigative report from the
20 submitting agency pursuant to paragraph (11) of subdivision (b)
21 of Section 11167.5.

22 (2) No person or agency shall require or request another person
23 to furnish a copy of a record concerning himself or herself, or
24 notification that a record concerning himself or herself exists or
25 does not exist, pursuant to paragraph (1).

26 (g) If a person is listed in the ~~Child Abuse Central Index~~ CACI
27 only as a victim of child abuse or neglect, and that person is 18
28 years of age or older, that person may have his or her name
29 removed from the index by making a written request to the
30 Department of Justice. The request shall be notarized and include
31 the person’s name, address, social security number, and date of
32 birth.

33 *SEC. 3. If the Commission on State Mandates determines that*
34 *this act contains costs mandated by the state, reimbursement to*
35 *local agencies and school districts for those costs shall be made*
36 *pursuant to Part 7 (commencing with Section 17500) of Division*
37 *4 of Title 2 of the Government Code.*

O