

ASSEMBLY BILL

No. 247

Introduced by Assembly Member Emmerson

February 10, 2009

An act to amend Section 11170 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 247, as introduced, Emmerson. Child abuse reporting: availability of information.

Existing law requires the Department of Justice to maintain an index of all reports of child abuse and severe neglect submitted by agencies mandated to make those reports. Existing law requires the Department of Justice to notify an agency that submits a child abuse report, or a prosecutor who requests notification, of any information maintained in the index that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. Existing law further requires that the relevant agency, as specified, make this information available to the appropriate licensing agency, as specified, as well as the reporting medical practitioner, child custodian, guardian ad litem, or appointed counsel, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

This bill would provide that this information be made available, instead of to the reporting medical practitioner, to the reporting health care practitioner, and would provide that the information be made available to the health care practitioner only if he or she is treating a person reported as a possible victim of known or suspected child abuse. The bill would make other conforming changes.

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

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

1 SECTION 1. Section 11170 of the Penal Code is amended to
2 read:

3 11170. (a) (1) The Department of Justice shall maintain an
4 index of all reports of child abuse and severe neglect submitted
5 pursuant to Section 11169. The index shall be continually updated
6 by the department and shall not contain any reports that are
7 determined to be unfounded. The department may adopt rules
8 governing recordkeeping and reporting pursuant to this article.

9 (2) The department shall act only as a repository of reports of
10 suspected child abuse and severe neglect to be maintained in the
11 Child Abuse Central Index pursuant to paragraph (1). The
12 submitting agencies are responsible for the accuracy, completeness,
13 and retention of the reports described in this section. The
14 department shall be responsible for ensuring that the Child Abuse
15 Central Index accurately reflects the report it receives from the
16 submitting agency.

17 (3) Information from an inconclusive or unsubstantiated report
18 filed pursuant to subdivision (a) of Section 11169 shall be deleted
19 from the Child Abuse Central Index after 10 years if no subsequent
20 report concerning the same suspected child abuser is received
21 within that time period. If a subsequent report is received within
22 that 10-year period, information from any prior report, as well as
23 any subsequently filed report, shall be maintained on the Child
24 Abuse Central Index for a period of 10 years from the time the
25 most recent report is received by the department.

26 (b) (1) The Department of Justice shall immediately notify an
27 agency that submits a report pursuant to Section 11169, or a
28 prosecutor who requests notification, of any information maintained
29 pursuant to subdivision (a) that is relevant to the known or
30 suspected instance of child abuse or severe neglect reported by the
31 agency. The agency shall make that information available to the
32 reporting ~~medical health care practitioner; who is treating a person~~
33 *reported as a possible victim of known or suspected child abuse.*
34 *The agency shall make that information available to the reporting*
35 *child custodian, guardian ad litem appointed under Section 326,*

1 or counsel appointed under Section 317 or 318 of the Welfare and
2 Institutions Code, or the appropriate licensing agency, if he or she
3 *or the licensing agency is treating* ~~treating~~ handling or investigating a case
4 of known or suspected child abuse or severe neglect.

5 (2) When a report is made pursuant to subdivision (a) of Section
6 11166, or Section 11166.05, the investigating agency, upon
7 completion of the investigation or after there has been a final
8 disposition in the matter, shall inform the person required or
9 authorized to report of the results of the investigation and of any
10 action the agency is taking with regard to the child or family.

11 (3) The Department of Justice shall make available to a law
12 enforcement agency, county welfare department, or county
13 probation department that is conducting a child abuse investigation
14 relevant information contained in the index.

15 (4) The department shall make available to the State Department
16 of Social Services, or to any county licensing agency that has
17 contracted with the state for the performance of licensing duties,
18 or to a tribal court or tribal child welfare agency of a tribe or
19 consortium of tribes that has entered into an agreement with the
20 state pursuant to Section 10553.1 of the Welfare and Institutions
21 Code, information regarding a known or suspected child abuser
22 maintained pursuant to this section and subdivision (a) of Section
23 11169 concerning any person who is an applicant for licensure or
24 any adult who resides or is employed in the home of an applicant
25 for licensure or who is an applicant for employment in a position
26 having supervisory or disciplinary power over a child or children,
27 or who will provide 24-hour care for a child or children in a
28 residential home or facility, pursuant to Section 1522.1 or 1596.877
29 of the Health and Safety Code, or Section 8714, 8802, 8912, or
30 9000 of the Family Code.

31 (5) The Department of Justice shall make available to a Court
32 Appointed Special Advocate program that is conducting a
33 background investigation of an applicant seeking employment
34 with the program or a volunteer position as a Court Appointed
35 Special Advocate, as defined in Section 101 of the Welfare and
36 Institutions Code, information contained in the index regarding
37 known or suspected child abuse by the applicant.

38 (6) For purposes of child death review, the Department of Justice
39 shall make available to the chairperson, or the chairperson's
40 designee, for each county child death review team, or the State

1 Child Death Review Council, information maintained in the Child
2 Abuse Central Index pursuant to subdivision (a) of Section 11170
3 relating to the death of one or more children and any prior child
4 abuse or neglect investigation reports maintained involving the
5 same victims, siblings, or suspects. Local child death review teams
6 may share any relevant information regarding case reviews
7 involving child death with other child death review teams.

8 (7) The department shall make available to investigative
9 agencies or probation officers, or court investigators acting
10 pursuant to Section 1513 of the Probate Code, responsible for
11 placing children or assessing the possible placement of children
12 pursuant to Article 6 (commencing with Section 300), Article 7
13 (commencing with Section 305), Article 10 (commencing with
14 Section 360), or Article 14 (commencing with Section 601) of
15 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
16 Code, Article 2 (commencing with Section 1510) or Article 3
17 (commencing with Section 1540) of Chapter 1 of Part 2 of Division
18 4 of the Probate Code, information regarding a known or suspected
19 child abuser contained in the index concerning any adult residing
20 in the home where the child may be placed, when this information
21 is requested for purposes of ensuring that the placement is in the
22 best interest of the child. Upon receipt of relevant information
23 concerning child abuse or neglect investigation reports contained
24 in the index from the Department of Justice pursuant to this
25 subdivision, the agency or court investigator shall notify, in writing,
26 the person listed in the Child Abuse Central Index that he or she
27 is in the index. The notification shall include the name of the
28 reporting agency and the date of the report.

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

35 (9) The Department of Justice shall make available to a county
36 child welfare agency or delegated county adoption agency, as
37 defined in Section 8515 of the Family Code, conducting a
38 background investigation, or a government agency conducting a
39 background investigation on behalf of one of those agencies,
40 information regarding a known or suspected child abuser

1 maintained pursuant to this section and subdivision (a) of Section
2 11169 concerning any applicant seeking employment or volunteer
3 status with the agency who, in the course of his or her employment
4 or volunteer work, will have direct contact with children who are
5 alleged to have been, are at risk of, or have suffered, abuse or
6 neglect.

7 (10) (A) Persons or agencies, as specified in subdivision (b),
8 if investigating a case of known or suspected child abuse or neglect,
9 or the State Department of Social Services or any county licensing
10 agency pursuant to paragraph (4), or a Court Appointed Special
11 Advocate program conducting a background investigation for
12 employment or volunteer candidates pursuant to paragraph (5), or
13 an investigative agency, probation officer, or court investigator
14 responsible for placing children or assessing the possible placement
15 of children pursuant to paragraph (7), or a government agency
16 conducting a background investigation of an applicant seeking
17 employment as a peace officer pursuant to paragraph (8), or a
18 county child welfare agency or delegated county adoption agency
19 conducting a background investigation of an applicant seeking
20 employment or volunteer status who, in the course of his or her
21 employment or volunteer work, will have direct contact with
22 children who are alleged to have been, are at risk of, or have
23 suffered, abuse or neglect, pursuant to paragraph (9), to whom
24 disclosure of any information maintained pursuant to subdivision
25 (a) is authorized, are responsible for obtaining the original
26 investigative report from the reporting agency, and for drawing
27 independent conclusions regarding the quality of the evidence
28 disclosed, and its sufficiency for making decisions regarding
29 investigation, prosecution, licensing, placement of a child,
30 employment or volunteer positions with a CASA program, or
31 employment as a peace officer.

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

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

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

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information

1 concerning child abuse or neglect reports contained in the index,
2 when making a placement with a responsible relative pursuant to
3 Sections 281.5, 305, and 361.3 of the Welfare and Institutions
4 Code. Upon receipt of relevant information concerning child abuse
5 or neglect reports contained in the index from the Department of
6 Justice pursuant to this subdivision, the agency shall also notify
7 in writing the person listed in the Child Abuse Central Index that
8 he or she is in the index. The notification shall include the location
9 of the original investigative report and the submitting agency. The
10 notification shall be submitted to the person listed at the same time
11 that all other parties are notified of the information, and no later
12 than the actual judicial proceeding that determines placement.

13 If Child Abuse Central Index information is requested by an
14 agency for the placement of a child with a responsible relative in
15 an emergency situation pursuant to Article 7 (commencing with
16 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
17 and Institutions Code, the department is exempt from the
18 requirements of Section 1798.18 of the Civil Code if compliance
19 would cause a delay in providing an expedited response to the
20 child protective agency's inquiry and if further delay in placement
21 may be detrimental to the child.

22 (d) The department shall make available any information
23 maintained pursuant to subdivision (a) to out-of-state law
24 enforcement agencies conducting investigations of known or
25 suspected child abuse or neglect only when an agency makes the
26 request for information in writing and on official letterhead, or as
27 designated by the department, identifying the suspected abuser or
28 victim by name and date of birth or approximate age. The request
29 shall be signed by the department supervisor of the requesting law
30 enforcement agency. The written requests shall cite the out-of-state
31 statute or interstate compact provision that requires that the
32 information contained within these reports shall be disclosed only
33 to law enforcement, prosecutorial entities, or multidisciplinary
34 investigative teams, and shall cite the safeguards in place to prevent
35 unlawful disclosure of any confidential information provided by
36 the requesting state or the applicable interstate compact provision.

37 (e) (1) The department shall make available to an out-of-state
38 agency, for purposes of approving a prospective foster or adoptive
39 parent in compliance with the Adam Walsh Child Protection and
40 Safety Act of 2006 (Public Law 109-248), information regarding

1 a known or suspected child abuser maintained pursuant to
2 subdivision (a) concerning the prospective foster or adoptive
3 parent, and any other adult living in the home of the prospective
4 foster or adoptive parent. The department shall make that
5 information available only when the out-of-state agency makes
6 the request indicating that continual compliance will be maintained
7 with the requirement in paragraph (20) of subdivision (a) of Section
8 671 of Title 42 of the United States Code that requires the state to
9 have in place safeguards to prevent the unauthorized disclosure of
10 information in any child abuse and neglect registry maintained by
11 the state and prevent the information from being used for a purpose
12 other than the conducting of background checks in foster or
13 adoption placement cases.

14 (2) With respect to any information provided by the department
15 in response to the out-of-state agency's request, the out-of-state
16 agency is responsible for obtaining the original investigative report
17 from the reporting agency, and for drawing independent
18 conclusions regarding the quality of the evidence disclosed and
19 its sufficiency for making decisions regarding the approval of
20 prospective foster or adoptive parents.

21 (3) (A) Whenever information contained in the index is
22 furnished pursuant to this subdivision, the department shall charge
23 the out-of-state agency making the request a fee. The fee shall not
24 exceed the reasonable costs to the department of providing the
25 information. The only increase shall be at a rate not to exceed the
26 legislatively approved cost-of-living adjustment for the department.
27 In no case shall the fee exceed fifteen dollars (\$15).

28 (B) All moneys received by the department pursuant to this
29 subdivision shall be deposited in the Department of Justice Child
30 Abuse Fund, established under subparagraph (B) of paragraph (11)
31 of subdivision (b). Moneys in the fund shall be available, upon
32 appropriation by the Legislature, for expenditure by the department
33 to offset the costs incurred to process requests for information
34 pursuant to this subdivision.

35 (f) (1) Any person may determine if he or she is listed in the
36 Child Abuse Central Index by making a request in writing to the
37 Department of Justice. The request shall be notarized and include
38 the person's name, address, date of birth, and either a social
39 security number or a California identification number. Upon receipt
40 of a notarized request, the Department of Justice shall make

1 available to the requesting person information identifying the date
2 of the report and the submitting agency. The requesting person is
3 responsible for obtaining the investigative report from the
4 submitting agency pursuant to paragraph (11) of subdivision (b)
5 of Section 11167.5.

6 (2) No person or agency shall require or request another person
7 to furnish a copy of a record concerning himself or herself, or
8 notification that a record concerning himself or herself exists or
9 does not exist, pursuant to paragraph (1) of this subdivision.

10 (g) If a person is listed in the Child Abuse Central Index only
11 as a victim of child abuse or neglect, and that person is 18 years
12 of age or older, that person may have his or her name removed
13 from the index by making a written request to the Department of
14 Justice. The request shall be notarized and include the person's
15 name, address, social security number, and date of birth.