


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: April 16, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No:
Assignment No: 18-04-0293

SUBJECT: Police Department Recommendation for the 2017 – 2018 State Legislative Program Regarding AB 2005 (Santiago)

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2017 - 2018 State Legislative Program SUPPORT for AB 2005 (Santiago), which would require a police or sheriff's department to forward reports of known or suspected child abuse or severe neglect that are investigated and determined to be substantiated to the California Department of Justice (CA DOJ) for inclusion in the Child Abuse Central Index (CACI).

SUMMARY

The Police Department has forwarded to this Office a bill response report recommending that the City support AB 2005 (Santiago). The bill would eliminate a provision in existing law that prohibits law enforcement from forwarding substantiated reports of abuse and neglect to CA DOJ for inclusion in the CACI and would instead require law enforcement agencies to forward such reports to CA DOJ for inclusion in the CACI.

Attached is a Resolution in support of this bill based on the findings from the Police Department.

BACKGROUND

The California Department of Justice has maintained the CACI since its creation in 1965. The CACI is an index of persons against whom reports of child abuse or neglect have been made, investigated, and determined by the reporting agency to meet the requirements for inclusion. These reports are made available to law enforcement for investigations and prosecutions. Designated social welfare agencies may also use the database to aid background checks for child care facilities, foster homes, and other child placements.

The Child Abuse and Neglect Reporting Act (CANRA) created the current version of the CACI in the early 1980s. CANRA did not require individuals be notified if they were listed on the CACI, nor were individuals able to determine if they had been listed at all. Subsequent litigation in State (*Burt v. County of Orange*) and Federal (*Humphries v. Los Angeles County*) courts determined that individuals had a due process right to be notified if they were listed in the CACI and to challenge their inclusion in the Index.

In 2011, the Legislature passed AB 717 (Ammiano), which amended CANRA to provide for a hearing to seek removal from the CACI. AB 717 limited reports for inclusion to substantiated reports; inconclusive and unfounded reports were removed. The legislation also prohibited law

enforcement from forwarding reports of abuse and neglect to the CA DOJ for inclusion in the CACI. Policy committee analyses for AB 717 do not address why this latter provision was included, except to note that AB 717 codified requirements addressed in court settlements and other constitutional deficiencies.

Existing law requires mandatory reporting of suspected child abuse or neglect to a police or sheriff's department, county probation department, or the county welfare department. If such reports are deemed substantiated by the investigator, meaning that the investigator concludes that it is more likely than not that child abuse occurred, reporting agencies must send the CA DOJ a report for inclusion in the CACI. Reporting agencies must also notify the reported person of their listing and provide for a hearing. If a hearing determines the listing was based on a substantiated report, the reporting agency must notify CA DOJ and CA DOJ must remove the person's name from CACI. Currently, only the Department of Child and Family Services (DCFS) and local Probation departments are allowed to forward substantiated reports to CA DOJ.

AB 2005 would eliminate the provision preventing law enforcement agencies from forwarding substantiated reports to CA DOJ for inclusion in the CACI. Law enforcement agencies would be subject to existing provisions of the Penal Code that require persons listed in the CACI to be notified and provided a hearing.

Proponents of AB 2005 argue the bill would close a gap under current law. Social welfare agencies, such as the DCFS, are limited to investigating child abuse or severe neglect cases where known or suspected non-familial abusers, such as teachers, day care workers, coaches and clergy, may not be reported to the CACI. The Police Department recommends support for AB 2005 because it will allow for the inclusion of reports of non-familial abusers to the Child Abuse Central Index, thus making the database more robust and effective. AB 2005 is co-sponsored by the Los Angeles County District Attorney and the Los Angeles County Sheriff's Department.

Opponents of AB 2005 argue that due process protections remain weak under the legislation. Law enforcement agencies would only be required to follow the general requirements in existing law. The process for determining a substantiated report, requiring no independent review, is also of concern to the legislation's opponents.

BILL STATUS

2/12/2018	Referred to Committee on Public Safety.
3/21/2018	From committee: Do pass and re-refer to Committee on Appropriations (7-0). Re-referred to Committee on Appropriations.
4/04/2018	In committee: Set, first hearing. Referred to suspense file.



Tim Plummer
Analyst

SMT:tcp

Attachments: Resolution supporting AB 2005 (Santiago)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the California State Legislature created the Child Abuse Central Index (CACI) in 1965 as a centralized system for collecting reports of suspected child abuse; and

WHEREAS, the Legislature has designated certain individuals, including police officers, as mandated reporters and requires them to report suspected child abuse or neglect to certain specified agencies whenever they have knowledge or observe a child they know or reasonably suspect to be the victim of child abuse or neglect; and

WHEREAS, existing law requires agencies receiving reports from mandated reporters to forward such reports to the California Department of Justice in every case where suspected child abuse or severe neglect is determined to be substantiated for inclusion in the CACI; and

WHEREAS, information in the CACI is available to aid law enforcement investigations and prosecutions, as well as to help social welfare agencies perform background checks on individuals as needed; and

WHEREAS, amendments to the Penal Code in 2012 prohibited police or sheriff's departments from forwarding reports to the California Department of Justice for inclusion in the CACI; and

WHEREAS, Child Protective Services (CPS) agencies only investigate child abuse or severe neglect cases involving known or suspected family members, but do not investigate cases arising from known or suspected non-familial abusers; and

WHEREAS, the Police Department believes that allowing police and sheriff's departments to forward reports to the CACI would make the database more robust and effective by including cases involving non-familial abusers;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017 - 2018 State Legislative Program SUPPORT for AB 2005 (Santiago), which 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 investigated and determined to be substantiated to the California Department of Justice for inclusion in the Child Abuse Central Index.