
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1799 **Hearing Date:** July 2, 2024
Author: Jackson
Version: June 3, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Child abuse: reporting*

HISTORY

Source: Author

Prior Legislation: AB 2085 (Holden), Ch. 770, Stats. 2022
AB 1085 (Kamlager), Ch. 832, Stats. 2022

Support: California Academy of Child and Adolescent Psychiatry; California Family Resource Association; Casa of Los Angeles; Child Abuse Prevention Center and Its Affiliates Safe Kids California, Prevent Child Abuse California and The California Family Resource Association; Child Abuse Prevention Council of Contra Costa County; Children Now; Children's Institute; Children's Law Center of California; Community Action Partnership of San Luis Obispo County, INC.; Dependency Advocacy Center; Fighting Back Partnership; Helpline Youth Counseling, INC.; Reimagine Child Safety Coalition; Safe & Sound; Sheedy Consulting, LLC; Shields for Families; YMCA of San Diego County

Opposition: County Welfare Directors Association of California (unless amended)

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this bill is to specify that mandated reporters may, but are not required, to report a case of general neglect for purposes of the Child Abuse and Neglect Reporting Act (CANRA).

Existing law establishes CANRA, which generally is intended to protect children from abuse and neglect. (Pen. Code, § 11164.)

Existing law defines “neglect” under CANRA as the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare. The term includes both acts and omissions on the part of the responsible person. (Pen. Code, § 11165.2)

Existing law defines “severe neglect” under CANRA as the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. “Severe neglect” also means those situations of neglect

where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as specified, including the intentional failure to provide adequate food, clothing, shelter, or medical care. (Pen. Code, § 11165.2, subd. (a).)

Existing law specifies that “the willful harming or injuring of a child or the endangering of the person or health of a child” means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered. (Pen. Code, § 11165.3.)

Existing law defines “general neglect” under CANRA to mean the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred but the child is at substantial risk of suffering serious physical harm or illness. “General neglect” does not include a parent’s economic disadvantage. (Pen. Code, § 11165.2, subd. (b).)

Existing law defines “child abuse or neglect” under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury. “Child abuse or neglect” does not include a mutual affray between minors. “Child abuse or neglect” does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer. (Pen. Code, § 11165.6.)

Existing law defines “mandated reporter” under CANRA as specific child-care custodians, health practitioners, law enforcement officers, and other medical and professional persons. (Pen. Code, § 11165.7.)

Existing law states that employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with a statement on a form to the effect that the employee has knowledge of their duties under CANRA and will comply with those provisions. (Pen. Code, §§ 11165.7, subd. (c)(1) and 11166.5, subd. (a).)

Existing law requires any mandated reporter who has knowledge of or observes a child, their professional capacity or within the scope of their employment whom they know or reasonably suspect has been the victim of child abuse or neglect, to report it as specified, to any police or sheriff’s department, a county probation department if designated by the county to receive mandated reports, or the county welfare department. (Pen. Code, §§ 11166, subd. (a) & 11165.9.)

Existing law defines “reasonable suspicion” under CANRA as meaning that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person’s training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient. For purposes of this article, the pregnancy of a minor

does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse. (Pen. Code, § 11166, subd. (a)(1).)

Existing law mandates reports of suspected child abuse or neglect to include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to them. (Pen. Code, § 11167, subd. (a).)

Existing law states that information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect. (Pen. Code, § 11167, subd. (b).)

Existing law allows information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, to be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect. (Pen. Code, § 11167, subd. (c).)

Existing law keeps the identity of all persons who report confidential and disclosed only among agencies receiving or investigating mandated reports. No agency or person shall disclose the identity of any person who reports under this article to that person's employer except with the employee's consent or by court order. (Pen. Code, § 11167, subd. (d).)

Existing law provides that notwithstanding the confidentiality requirements of these provisions, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect, as specified, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against them, in a manner that is consistent with laws protecting the identity of the reporter. (Pen. Code, § 11167, subd. (e).)

Existing law requires specified government agencies to forward to the DOJ a report of every case of suspected child abuse or neglect that it investigates and determines to be substantiated; and if a previously filed report proves to be not substantiated, the DOJ shall be notified in writing, and shall not retain that report. (Pen. Code, § 11169, subd. (a).)

Existing law defines "substantiated report" as a report that is determined by the investigator to constitute child abuse or neglect based on some evidence that makes it more likely than not that child abuse or neglect occurred. (Pen. Code, § 11165.12, subd. (b).)

Existing law provides that any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of \$1,000 or by both. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until a

specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)

This bill provides that a mandated reporter may, but is not required to, report a case of general neglect.

COMMENTS

1. Need for This Bill

According to the author's office:

AB 1799 would address major issues with over reporting, false reports, racial and economic biases in referrals, privacy issues, and the burden on mandatory reporters. Removing the requirement to report suspected neglect from the Child Abuse and Neglect Reporting Act (CANRA) can help focus resources on severe cases, reduce burden on mandatory reporters, promote family support, prevent unnecessary investigations, and better target high-risk cases. Furthermore, removing this requirement from CANRA can help ensure that resources are used efficiently and that professionals can better support families in need.

2. Child Welfare System

The state provides protections to children who experience abuse or neglect in their homes through a variety of services aimed at protecting children and strengthening families. The state provides prevention services—such as substance use disorder treatment and in home parenting support—to families at risk of child removal to help families remain together, if possible. When children cannot remain safely in their homes, the state provides temporary out of home placements through the foster care system, often while providing services to parents with the aim of safely reunifying children with their families. If children are unable to safely return to their parents, the state provides assistance to establish a permanent placement for children, for example, through adoption or guardianship.

In 2023-2024, the estimated average monthly caseloads for various child welfare system service components include:

- 32,000 in-person investigations, in response to maltreatment allegations.
- 13,000 children with families receiving family maintenance services to help keep children safely at home.
- 17,000 children in foster care whose families are receiving reunification services.
- 33,000 children in foster care for whom the child welfare system is working toward permanent placement.

(See <https://lao.ca.gov/Publications/Report/4897> (Apr. 2024).) These statistics do not include voluntary family strengthening programs through the child welfare system or community-based organizations. The child welfare system also provides monthly maintenance payments to children in adoptive and guardianship placements, which are not included in the statistics. (*Ibid.*)

3. The Child Abuse and Neglect Reporting Act (CANRA)

CANRA (Penal Code §§ 11164 et seq.) provides “a comprehensive reporting scheme aimed toward increasing the likelihood that child abuse victims [will] be identified.” (*Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 90.) “The Act requires persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation.” (*Ibid.*; accord, *James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 253-254.)

The Act identifies 49 separate categories of mandated reporters which includes teachers, school employees, doctors, athletic coaches, police officers, firefighters, social workers, and persons whose duties require direct contact with and supervision of minors, among many others. (Pen. Code § 11165.7, (a)(1)-(49).) A mandated reporter must report known or reasonably suspected child abuse or neglect to a designated agency under section 11165.9, specifically “any police or sheriff’s department, not including a school district police or security department, county probation department, if designated by the county to receive such reports, or county welfare department.” (Pen. Code, § 11166, subd. (a).) Failure to make the required report is a misdemeanor. (Pen. Code, § 11166, subd. (c).)

4. Disparities in Reports of Child Abuse and Neglect

Under current law, a mandated reporter must report known or reasonably suspected child abuse and neglect. “Child abuse or neglect” is defined to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined, and unlawful corporal punishment or injury as defined. (Pen. Code, § 11165.6.) The law defines “neglect” to mean means the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare. The term includes both acts and omissions on the part of the responsible person. (Pen. Code, § 11165.2.) Neglect includes both “severe neglect” and “general neglect.” Prior to 2023, “general neglect” was defined as the “negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.” (Penal Code, § 11165.2, subd. (b).)

Unfortunately, this broad definition resulted in reporting for general neglect often just because a family was poor, even when there is no substantial risk of physical harm to the child.

Reporting a family for not having what a child needs to thrive essentially amounts to reporting a family for being poor. Reporting parents, for example, for not pursuing dental care for their child makes little sense because child welfare services are now tied up with chasing up that report, instead of providing the needed services and dealing with the real problem. We know that most reports of neglect are about manifestations of poverty. Often children are removed and placed in foster homes where foster parents get funding from the government. Had that funding instead been given to the original family, they would have been able to provide what their child needs at home. So instead of addressing the underlying poverty, we remove children for other people to raise them.

(See <https://www.rochester.edu/newscenter/american-child-welfare-system-has-lost-its-way-says-rochester-historian-464292/> [as of June 24, 2024].)

In 2022, the Legislature limited the definition of general neglect to only include circumstances where the child is at substantial risk of suffering serious physical harm or illness, and would provide that general neglect does not include a parent's economic disadvantage. (AB 2085 (Holden), Ch. 770, Stats. 2022.)

In addition to poverty, race and ethnicity of families result in disproportionalities and disparities in the child welfare system. According to a recent Legislative Analyst's Office (LAO) report, the proportions of Black and Native American youth in foster care are around four times larger than the proportions of Black and Native American youth in California overall. Black and Native American children are more than twice as likely as white children to have experienced some level of child welfare system involvement by the time they turn 18. Disparities between racial and ethnic groups are present beginning with allegations and are maintained through all stages of child welfare system involvement, becoming most pronounced for children who are removed from their home and are in foster care. Even after accounting for poverty, disparities remain for Black and Native American youth who are still more likely than all other racial/ethnic groups to have substantiated allegations, enter into, and be in care. (LAO, [California's Child Welfare System: Addressing Disproportionalities and Disparities](#) (Apr. 2024) [as of June 24, 2024].)

The LAO report made several recommendations to begin to address disproportionalities including improved data collection by Department of Social Services on quantifiable information around the type of neglect and factors leading to substantial risk of harm to the child, training on racial equity and implicit bias for child welfare social workers as well as standardized training for the most frequent mandated reporters to help distinguish between reportable general neglect—wherein children are at substantial risk of harm—and the conditions of economic hardship. The report also recognized that the Legislature may need to implement additional policy and practice changes around neglect to reduce disproportionalities and disparities based on poverty and race or ethnicity in the child welfare system.

This bill specifies that mandated reporters may, but are not required, to report a case of general neglect. This change provides discretion to mandated reporters so they can make a determination whether the circumstances indicates abuse rather than feeling compelled to report all suspected general neglect for fear of liability under CANRA.

5. Mandated Reporting to Community Supporting Task Force Recommendations

The Mandated Reporting to Community Supporting Task Force was created to develop recommendations for reforming California's policies mandating the reporting of suspected child abuse or neglect. Research shows that only a small percentage of these reports are confirmed as maltreatment, and that Black, Latino and Indigenous children and families in California are much more likely to be reported and become involved in the child welfare system.

The task force released its recommendations in May of this year. Those recommendations are as follows:

- 1) The California Child Welfare Council (CWC), through its Prevention and Early Intervention (PEI) Committee, shall establish a Mandated Reporting Advisory Committee (MRAC) to

ensure the transformation of Mandated Reporting to Community Supporting continues and disparities in the child welfare system are eliminated

- 2) Request the California Department of Social Services (CDSS), in collaboration with the Mandated Reporting Advisory Committee (MRAC), to continuously monitor disparities in the child welfare system by gathering and analyzing research, data, and the impact of all reports of abuse and neglect, disaggregated by race/ethnicity, socioeconomic status, rural/urban, ZIP code/geographic region, domestic violence, substance use, mental health, disabilities, mandated reporter category and other factors to be published publicly and submitted to the California State Legislature on a minimum of an annual basis.
- 3) The California Department of Social Services (CDSS) shall ensure the implementation of AB 2085 in all California Counties and Tribes until such time that Recommendation #5 is implemented and General Neglect is removed as a mandated reporting requirement.
- 4) In alignment with the Legislative Analyst Office (LAO) report, California's Child Welfare System: Addressing Disproportionality and Disparities, I encourage the LAO to continue analyzing disparities in the Mandated Reporting system to determine if narrowing mandated reporter categories in the Child Abuse and Neglect Reporting Act (CANRA) negatively impacts child safety.
- 5) Support the amendment of the Child Abuse and Neglect Reporting Act (CANRA) to remove the reporting requirement of General Neglect for Mandated Reporters, while continuing to require mandated reporting on instances of Severe Neglect and child abuse (inclusive of physical and sexual abuse).
- 6) Support the amendment of the Child Abuse and Neglect Reporting Act (CANRA) to revise and clarify the definition of Severe Neglect³ to be aligned with the definition of Severe Neglect utilized in the California Structured Decision Making (SDM) Tool.
- 7) Encourage the California Department of Social Services (CDSS), in collaboration with the Mandated Reporting Advisory Committee (MRAC) and Counties, to implement a two-year pilot that provides Mandated Reporters with immunity from liability as identified in Penal Code Section 1116 (C) when there is a demonstrated use of a child abuse and neglect decision-making process that indicates a child's safety is not at risk and a report is not required.
- 8) Support the amendment of Child Abuse and Neglect Reporting Act (CANRA) to require all Mandated Reporters in California receive standardized training on child abuse and neglect to increase consistency of appropriate referrals to Child Protective Services and decrease disproportionate referrals due to race, ethnicity, or income status.
- 9) Require the CDSS Office of Child Abuse Prevention (OCAP) to develop, with participation of individuals with lived expertise, a standardized curriculum for Mandated Reporters. This standardized curriculum will include core content that must be included in all subsequently developed curriculum.
- 10) Encourage the California Department of Social Services (CDSS), in collaboration with the Mandated Reporting Advisory Committee (MRAC), to develop a Mandated Reporter web page specific to Child Abuse and Neglect Reporting to ensure the information is current,

comprehensive, and provides alternatives for Mandated Reporters to promote child safety and family well-being.

- 11) Require the California Department of Social Services (CDSS) to incorporate an assessment of the capacity of community supports and services that are available and accessible to Mandated Reporters to meet local needs of families in all 58 counties as a priority in the Family First Prevention Services Continuous Quality Improvement process.
- 12) Consistent with the PEI Community Pathway Recommendations, the California Department of Social Services (CDSS) shall be required to ensure Counties' Comprehensive Prevention Plans (CPP) incorporate information and education specific to Mandated Reporters regarding the implementation of and access to Community Pathways and/or community resources available to support families in their communities.
- 13) Require the California Department of Social Services' (CDSS) to ensure recommendations from the Mandated Reporting to Community Supporting (MRCS) Task Force and any subsequent policy reforms related to Mandated Reporting are enacted and efforts necessary to ensure continued transformation of the Mandated Reporting system are advanced.
- 14) Ensure the creation and implementation of a statewide narrative change initiative that acknowledges the harm committed by mandated reporting and the child welfare system, especially to Black/African American and Native American/Indigenous families, and shifts beliefs and behaviors toward families and communities safely caring for their children.

(*Mandated Reporting to Community Supporting Task Force Final Recommendations* (May 14, 2024) see https://www.caltrin.org/wp-content/uploads/2024/05/Final_MRCS-Task-Force-Recommendations_May-14-2024.pdf > [as of June 21, 2024].)

This bill codifies recommendation 5, amending CANRA to remove the requirement to report general neglect. Proponents of this bill argue that this is a powerful first step to reducing the harm and trauma caused by mandated reporting laws that disproportionately impacts families of color. The bill does not prevent reporting of general neglect, it just makes reporting permissive rather than mandatory. Opponents of the bill argue that the bill takes a piece-meal approach which, without implementation of the other recommendations, will end up being ineffective. Specifically, the need for standardized training, changes to liability and more robust culturally-derived and appropriate services are highlighted as necessary reforms to effectively implement the change sought by this bill.

6. Argument in Support

According to Children's Law Center:

Children of color are significantly more likely to be reported for allegations of abuse and neglect, despite the vast majority of those allegations being unfounded or unsubstantiated. A recent study showed that half of Black children, as well as half of Native American children, experienced an investigation at some point during their childhood, compared to nearly a quarter of white children. California is no exception, a recent report by the Legislative Analyst's Office explains that of children born in 1999 in California, approximately 50% of Black and Indigenous children will have some level of child welfare involvement by the age of 18, and children on Medi-Cal are more than twice as likely to experience child

welfare involvement than children with private health insurance. The racial disparities occur at all levels of the family regulation system, starting with allegations.

The majority of the calls that come into the Child Protection Hotline are for the catch all category of neglect, including cases of poverty, lack of resources and domestic violence. 80% of the neglect calls are not substantiated. Consequently, this issue results in undo trauma to parents and children, often leading to negative health outcomes. These health outcomes are significantly worse for mothers and babies who are separated by the Child Welfare System for issues largely related to economic insecurity.

In an effort to reduce trauma to families of color and the burden of an already overwhelmed system, AB 1799 (Jackson) removes general neglect reporting requirements that, as defined, would be more appropriately addressed outside of the Child Welfare System, while continuing to require that mandatory reporters report instances of child abuse and severe neglect.

7. Argument in Opposition

According to County Welfare Directors Association of California (CWDA) who are opposed unless amended:

The MRCS Task Force has spent the last year developing a set of recommended strategies to meet the broader vision. These MRCS Task Force recommendations were formally published on June 5th and presented to the CWC but have not yet been adopted; the CWC will formally take action on those recommendations at its September meeting. The recommendations include a number of strategies that are intended to work together to support the overall goals of the CWC's efforts and include changes to liability for mandated reporters, successful implementation of recent statutory changes to the definition of severe neglect, standardized mandated reporter training, and changes to the reporting requirement for allegations of general neglect. CWDA participated in the MRCS Task Force to inform its recommendations and supports the recommendations.

CWDA however cannot support AB 1799 as proposed at this time. The legislation pre-empts the CWC's consideration of the recommendations in totality, proposing to implement only one aspect absent consideration of the twelve other recommendations put forth in the Task Force report. Critically, the Task Force has not decided or put forth a plan on how those recommendations should be implemented. This is the crux of CWDA's concerns on two points: training and liability.

CWDA strongly believes that the law on reporting general neglect should not be changed unless mandated reporters are provided updated and standardized training to explain the new policy. If the goal of changing the requirement for mandated reporters to call when there is suspected general neglect is to reduce those calls to child welfare and divert them instead to community-based organizations or other social safety net programs, then we need to make certain mandated reporters understand that change and what their responsibilities are

under the new law. Additionally, a recurring theme from mandated reporters is that they over-report all instances of suspected general neglect due to fear of liability or prosecution for failure to do so. Without changing the liability standard, the fear of prosecution or civil liability looms over them, and leads to fear-based decision making that will continue to drive calls to our hotlines for general neglect, instead of to our community partners.

Even with changes to mandated reporting liability law and increased training, we note that meaningful change will not occur until a robust community pathway is implemented to provide culturally-derived and appropriate services for families, accessed through community-based providers and from child welfare systems through diversion programs. California's prevention services continue to be stood up under the State Family First Prevention Services Program, although funding for this program is one time and other challenges remain in implementation, including access to federal matching funding.

As child welfare experts we want to see these recommendations succeed and to focus our efforts on children who truly need intervention from abuse and severe neglect, but we do not think this is best accomplished in a piece-meal fashion.

CWDA requests AB 1799 be amended to adopt two other critical changes as recommended by the MRCS Task Force: test pilot the elimination of liability to mandated reporters (reference Recommendation #7) and require the Department of Social Services to develop standardized mandated reporter training inclusive of the change to general neglect reporting requirements (reference Recommendation #8). We further recommend delaying implementation of the general neglect reporting requirement to July 1, 2026. These changes would keep momentum moving forward, demonstrating the State's strong commitment to mandated reporting reform and will give the CWC and MRCS Task Force additional time to work with the Legislature to stage implementation of the various other recommendations designed to build capacity of community-based supports and services.

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