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January 21, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814



ASST. AUDITOR-CONTROLLERS

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Dear Ms. Higashi:

**LOS ANGELES COUNTY'S REVISED PARAMETERS & GUIDELINES
INTERAGENCY CHILD ABUSE AND NEGLECT INVESTIGATION REPORTS**

The County of Los Angeles respectfully submits its revised parameters and guidelines for the Interagency Child Abuse and Neglect Investigation Reports program.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk

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Enclosure

Los Angeles County's Revised Parameters and Guidelines Narrative
Interagency Child Abuse and Neglect Investigation Reports [00-TC-22]

This revision of the County of Los Angeles [County] draft Interagency and Child Abuse and Neglect [ICAN] Investigation Reports parameters and guidelines [Ps&Gs] updates those filed with the Commission on State Mandates [Commission] on January 14, 2008. Since then, substantial progress has been made in developing standard times for performing repetitive law enforcement and county welfare agency ICAN tasks.

The use of standard times in the County's revised ICAN Ps&Gs is permitted under 'reasonable reimbursement methodology' [RRM] provisions¹. These provisions permit claimants to avoid the perplexing tasks of documenting time spent on specific ICAN tasks which now span ten years. Also, claimants need not perform complicated time studies which would be subject to State audit and possible disallowance.

The State also benefits from the use of RRMs. Administration of the ICAN reimbursement program is simplified. One set of uniform standard times would be available to claimants, thereby reducing the State's expense in reviewing individual time studies and related documentation.

The County's RRMs presented for review here are in the final stages, but not yet complete. They are submitted now because the Commission requested them now. In this regard, Nancy Patton, Commission's Assistant Executive Director, requested an early view of the County's standard time surveys as "... the proposed reimbursable activities that are being circulated in surveys used to develop a reasonable reimbursement methodology [RRM] are not currently included in the proposed parameters and guidelines". As such, Commission staff and other interested parties presently have no venue for official [on the record] comment on the County's ICAN standard time surveys.

Accordingly, the County submits its revised ICAN Ps&Gs and supporting documentation for review and comment.

¹ The RRM provisions are found in Government Code Section 17518.5 which defines, in subdivision (a), an RRM as "... a formula for reimbursing local agencies and school districts for costs mandated by the state...". Subdivision (d) provides, in pertinent part, that "Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs...".

Developing statewide standard times for performing frequently recurring ICAN duties was found to be the best approach to recovering reimbursable law enforcement and county welfare costs. In coming to this conclusion, County staff met and conferred with other claimants, state and local officials, and law enforcement and social service experts.

Commission staff also assisted in the development of the ICAN time surveys by hosting three informational ICAN prehearing conferences to discuss activities that were ‘reasonably necessary’, and therefore reimbursable, in implementing ICAN services. These conferences were well attended and included staff from the State Department of Justice [DOJ] who explained ICAN investigation, reporting and other requirements².

Regarding the law enforcement survey, the SB90 Service staff of the California State Association of Counties [CSAC] and the League of California Cities [League] conducted three specialized ICAN conferences for law enforcement. The standard time survey that the League and CSAC used was developed by the Los Angeles County Sheriff department [LASD] staff³.

In addition, key excerpts of child abuse investigation protocols and procedures are provided here to demonstrate the many steps that are reasonably necessary in conducting an ‘active investigation’⁴ as specified by DOJ.

Regarding the county welfare agency survey, a core team of County staff, California Welfare Directors Association [CWDA] staff and State Department of Social Services [SDSS] staff developed and administered the survey. SDSS staff were particularly helpful in differentiating specific social service child abuse duties

² DOJ’s requirements are detailed in their 24 page “Guide to Reporting Child Abuse to the California Department of Justice,” (2005), which was attached as Exhibit C to the County’s initial draft Ps&Gs submission of January 14, 2008.

³ The declarations of two LASD staff, who were instrumental in developing the law enforcement ICAN time survey, are attached as Exhibit 1 [the Ferrell declaration] and as Exhibit 3 [the Scott declaration].

⁴ These excerpts are from the “Los Angeles County Sheriff Department Child Abuse Protocol” [attached as Exhibit 4] and the “Investigation and Prosecution of Child Abuse Manual, published by the American Prosecutors Research Institute [attached as Exhibit 7].

mandated under ICAN from those that are mandated [and funded] under other programs.

Active Investigation

Active investigations play a crucial role in the ICAN program. As noted in the “Child Abuse and Neglect Reporting Act Task Force Report”, attached in pertinent part on page 6 of Exhibit 8, “... an agency may not forward a report to the Index unless it has conducted an active investigation (Pen. Code, § 11169, subd. (a)”. The Task Force Report goes on to explain, on page 6, that:

“Key to whether an investigation will lead to a report being forwarded to the Index is the determination of whether abuse occurred. In order to be submitted to the Index, a report must be “substantiated” or “inconclusive.” (See Pen. Code, §§ 11169, subd. (a), 11170, subd. (a)(1).) A “substantiated” report means one that the agency determines is based on some credible evidence of abuse; an “inconclusive” report is one that is not unfounded but in which the findings are inconclusive and there exists insufficient evidence to determine that child abuse or neglect occurred. (Pen. Code, § 11165.12, subs. (b), (c).)10 After conducting an active investigation and creating an investigative report, the investigating agency must submit to DOJ a one-page summary report on every case of abuse or severe neglect which is determined not to be “unfounded” (i.e., to be false or inherently improbable, to involve an accidental injury, or not to constitute child abuse). (Pen. Code, §§ 11165.12, subd. (a), 11169, subd. (a), 11170, subd.)”

Regarding the duties that must be performed in conducting an active investigation, Daniel Scott with the Los Angeles County Sheriff Department’s Child Abuse Detail, indicates on page 2 in Exhibit 3, that:

“... the California Department of Justice (DOJ) Form SS 8583, as revised in June 2005, defines an “active investigation” in response to a report of known or suspected child abuse as including, at a minimum:

“... assessing the nature and seriousness of the suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es); gathering and preserving evidence; determining whether the incident is substantiated,

inconclusive or unfounded; and preparing a report that will be retained in the files of the investigative agency.” “

The duty to prepare a report that will be retained in the files of the investigative agency also requires that relevant supplementary documents be prepared and retained in the files of the investigative agency⁵. These required reports and documents are not sent into DOJ for inclusion in their Child Abuse Central Index. Nevertheless, city and county must bear the costs of preparing and retaining these reports and documents. Accordingly, the time to perform these duties is included in the County’s RRM’s.

Law Enforcement RRM’s

The County’s law enforcement RRM’s are based on four scenarios or levels of activities. As noted in the declaration of Suzie Ferrell with the Los Angeles County Sheriff Department’s Field Operation Support Services, attached as Exhibit 1, the four levels and reasonably necessary activities are:

Level - 1 No Child Abuse Based on Suspected Child Abuse Report (SCAR) Form

Receive SCAR from Department of Children and Family Services (DCFS); it is determined that no child abuse incident occurred based on SCAR information; SCAR is closed with no action taken.

Watch Officer opens SCAR from DCFS on computer (via RightFAx)
Watch Officer Prints SCAR for patrol officer
Watch Officer renames SCAR on computer
Watch Officer reviews SCAR for processing
Watch Officer initiates SCAR as a call for service in Computer Aided Dispatch (CAD) system
Watch Officer renames SCAR (adding tag#)

⁵ Specifically, Section 901(j) of Title 11 of the California Code of Regulations indicates that “ “Investigation Report” or “Underlying Investigative Report” means original and supplemental investigative documents developed by an agency during an investigation of a child abuse incident and that resulted in a report to DOJ”.

Watch Commander reviews and approved closure of SCAR
Watch Officer enters the closure of the SCAR in CAD

Level - 2 Patrol Investigation and No Child Abuse

Receive SCAR from DCFS; patrol officer investigates and determines no child abuse incident occurred.

Watch Officer opens SCAR from DCFS on computer (Via RightFax)
Watch Officer Prints SCAR
Watch Officer renames SCAR on computer
Watch Officer Reviews SCAR for processing
Watch Officer initiates SCAR as a call for service in CAD
Watch Officer renames SCAR (adding tag#)
Dispatch Officer assigns call to patrol officer
Patrol Officer receives call for service and acknowledges call
Patrol Officer interviews child
Patrol Officer interviews parents, siblings, witness, suspect
Patrol Officer enters closure of the SCAR in CAD

Level - 3 Child Abuse Investigation with Non-Severe Injuries (Physical & Mental)

Receive SCAR from DCFS; patrol officer investigates and writes a report; detective investigates incident.

Watch Officer opens SCAR from DCFS on computer (via RightFax)
Watch Officer prints SCAR
Watch Officer renames SCAR

Watch Officer reviews SCAR
Watch Officer initiates SCAR as a call for service in CAD
Watch Officer renames SCAR (adding tag#)
Dispatch Officer assigns call to Officer
Patrol Officer receives call for services and acknowledges call
Patrol Officer initial interview with child
Patrol Officer interview of parents, siblings, witnesses, suspects
Patrol Officer collects evidence (pictures, etc.)
Patrol Officer books evidence in to station
Patrol Officer writes child abuse incident report
Sergeant's approval of report
Secretary SSCII enters information in to LARCIS
Secretary SSCII copies, processes to detectives, and files report
Watch Officer renames SCAR as completed
Detective conducts Criminal History check
Detective collaborates with DCFS/CSW
Detective receives report and reviews
Detective reviews evidence
Detective interviews child
Detective interviews witnesses
Detective interviews suspect
Detective writes additional reports
Detective Sergeant approves reports and arrest
Secretary OAI – Tracking, filing, file preparation, etc.
Detective arrests suspect and book suspect

Detective presents all documentation and evidence to District Attorney's Office
Detective completes DOJ/CACI form
Detective completes DOJ/CACI advisement form (to suspect)
Detective completes Mandated Reporter notification form

Level - 4 Child Abuse Investigation Severe Injuries (Physical, Mental, & Sexual)

Receive SCAR from DCFS; patrol officer investigates, takes child to hospital for medical treatment, and writes a report; detective investigates incident.

Watch Officer opens SCAR from DCFS on computer (via RightFax)
Watch Officer prints SCAR
Watch Officer renames SCAR
Watch Officer reviews SCAR
Watch Officer initiates SCAR as a call for service in CAD
Watch Officer renames SCAR (adding tag#)
Dispatch Officer assigns call to patrol Officer
Patrol Officer receives call for services and acknowledges call
Patrol Officer initial interview with child
Patrol Officer interview of parents, siblings, witnesses, suspects
Patrol Officer collects evidence (pictures, etc.)
Patrol Officer - Sexual Assault and/or Physical Abuse Medical Exam at Hospital
Patrol Officer books evidence in to station
Patrol Officer writes child abuse incident report
Sergeant's approval of report
Secretary SSCII enters information in to LARCIS

Secretary SSCII copies, processes to detectives, and files report
Watch Officer renames SCAR as completed
Detective conducts Criminal History check
Detective collaborates with DCFS/CSW
Detective receives report and reviews
Detective reviews evidence
Detective - Forensic interview with child
Detective interviews witnesses
Detective interviews suspect
Detective - Consultation with Expert medical Professionals
Detective - Polygraph
Detective - DNA Retrieval
Detective - Review School Records
Detective - Crime scene/victim diagram/photography
Detective - Multi-Disciplinary Team Case Review
Detective writes reports
Detective Sergeant approves report and arrest
Detective - Search Warrant Prep, Ops Plan, and service of warrant
Detective - Protective Custody
Secretary OAI - Tracking, filing, file preparation, etc.
Detective arrests suspect and book suspect
Detective presents all documentation and evidence to District Attorney's Office
Detective completes DOJ/CACI form
Detective completes DOJ/CACI advisement form (to suspect)

Suzie Ferrell, with the Los Angeles County Sheriff Department's Field Operation Support Services, notes in her declaration, attached as Exhibit 1, that she has met and conferred with law enforcement officials throughout the State as well as staff representing various State associations in developing the [above] law enforcement survey instrument. She believes that the four levels, and activities identified within each level, are reasonably necessary in conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties.

In addition, Daniel Scott with the Los Angeles County Sheriff's Department, Special Victims Bureau, Child Abuse Detail indicates on page 2 of his declaration, attached as Exhibit 3, that he believes that the four levels, and activities identified within each level identified in Ms. Ferrell's declaration are reasonably necessary in conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties.

It should be noted that Mr. Scott is an expert in child abuse investigations. His credentials include:

1. 29 years of law enforcement experience, including more than 22 years of service in the Los Angeles County Sheriff's Department Family Crimes Bureau as a detective and sergeant specializing in child abuse investigations.
2. Developing and coordinating the law enforcement curriculum for Los Angeles County's Department of Children and Family Services' Bureau of Child Protection Inter-Agency Investigative Academy.
3. Lecturing for the California Sexual Assault Investigators Association, the American Prosecutors Research Institute, Child-help USA, and Children's Institute International.
4. Co-authoring an article entitled "Silent Screams – One Law Enforcement Agency's Response to Improving the Management of Child Abuse Reporting and Investigations", published in the 2001-02 issue of the Journal of Juvenile Law (22 J. Juv. L. 29).

Importantly, Mr. Scott, in his declaration, on page 2 of Exhibit 3, reiterates the necessity for including the activities identified in Ms. Ferrell's declaration when conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties. In addition, he makes the following points:

1. "The omission of one or more ICAN activities described ... [herein] ... could impair the requirement to conduct an "active investigation" as defined in the California Department of Justice (DOJ) Form SS 8583, as revised in June 2005."
2. "The omission of one or more ICAN activities described ... [herein] ... could impair the determination of whether the incident is substantiated, inconclusive or unfounded."
3. "Form SS 8583 states that a determination that an incident is inconclusive occurs when there is "... insufficient evidence of abuse, not unfounded (incident)".
4. "Form SS8583 requires that a determination that an incident is inconclusive be reported to DOJ and that DOJ will list inconclusive suspect(s) in their Child Abuse Central Index (CACI)."
5. "The omission of one or more ICAN activities described ... [herein] ... could result in a finding of insufficient evidence of abuse and that further investigation could provide sufficient evidence, thereby avoid listing an innocent person as a 'suspect' in the CACI."
6. "Accordingly, ... the activities described [herein] are reasonably necessary in performing ICAN duties."

Also, the seriousness of inadequate investigations was recently addressed by the Court in Humphries v. County of Los Angeles, 554 F.3d 1170 [2009], attached here in Exhibit 8. The Court states, on page 24 of Exhibit 8, that:

"Appellees argue that the current procedures present little risk of erroneous deprivation because an agency may transmit a child abuse report only after it "has conducted an active investigation and determined that the report is not unfounded." CAL. PENAL CODE §

11169(a). We are not assuaged. A determination that the report is “not unfounded” is a very low threshold. As we explained above, CANRA defines an “unfounded report” as a report that the investigator determines “to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect.” CAL. PENAL CODE § 11165.12(a). Effectively, a determination that a report is “not unfounded” merely means that the investigator could not affirmatively say that the report is “false.” This is the reverse of the presumption of innocence in our criminal justice system: the accused is presumed to be a child abuser and listed in CANRA unless the investigator determines that the report is false, improbable, or accidental. Incomplete or inadequate investigations must be reported for listing on the CACI.”

Therefore, the full range of activities described in Ms. Ferrell’s declaration are reasonably necessary in minimizing the occurrence of incomplete or inadequate investigations.

It should be noted that the activities used in the law enforcement survey may be further delineated into very specific procedures and checklists for conducting ICAN investigations. Exhibit 7 contains a 15 page example which is excerpted from the “Investigation and Prosecution of Child Abuse” manual published by the American Prosecutors Research Institute. While comprehensive, a survey instrument based on this manual would have been very lengthy and time consuming for respondents to complete. So a much shorter instrument was used.

Law Enforcement Survey

The law enforcement survey administered by the California State Association of Counties and League of California Cities is found in Exhibit 5. The survey requested that respondents provide the class code and salary costs of personnel performing activities in each of the four levels specified in Ms. Ferrell’s declaration as well the minimum, maximum and average time spent on each activity within each level.

Twelve law enforcement agencies responded. Together, they serve over half of the State’s population. The city law enforcement agency respondents were from Chula Vista, Fresno, Irvine, Los Angeles, Pasadena, San Mateo and Santa Ana. Those from counties were from Alameda, Los Angeles, San Bernardino, Santa Clara and Yolo.

The survey results for the average time category for each activity were compiled by the County and are found in Exhibit 2. The class code and salary information was not compiled. Instead, the County proposes to have claimants compute their blended productive hourly rate, in accordance with long established State Controllers Office instructions, when computing their reimbursement claims.

The law enforcement standard times⁶ for each level that are used in the County's revised ICAN Ps&Gs are:

Level - 1 No Child Abuse Based on Suspected Child Abuse Report (SCAR) Form

Receive SCAR from Department of Children and Family Services (DCFS); it is determined that no child abuse incident occurred based on SCAR information; SCAR is closed with no action taken. [Standard time is 110 minutes.]

Level - 2 Patrol Investigation and No Child Abuse

Receive SCAR from DCFS; patrol officer investigates and determines no child abuse incident occurred. [Standard time is 268 minutes.]

Level - 3 Child Abuse Investigation with Non-Severe Injuries (Physical & Mental)

Receive SCAR from DCFS; patrol officer investigates and writes a report; detective investigates incident. [Standard time is 934 minutes.]

Level - 4 Child Abuse Investigation Severe Injuries (Physical, Mental, & Sexual)

Receive SCAR from DCFS; patrol officer investigates, takes child to hospital for medical treatment, and writes a report; detective investigates incident. [Standard time is 2,162 minutes.]

There is an additional level 5. This level involves major cases where a child death, kidnapping, multiple victims from a daycare center and other serious matters are involved. Typically, these major cases are unique and require extensive and lengthy investigations. Therefore, these cases were not included in the standard time survey. However, reimbursement for these cases is provided for in the County's revised ICAN Ps&Gs using the actual cost method. Here, claimants

⁶ See Exhibit 2 for the standard times of activities within each level.

would provide a detailed itemization of the costs incurred in performing reasonably necessary activities, including labor, service and supply, equipment and contract costs.

County Welfare Agency Survey

The County's revised ICAN Ps&Gs includes RRM's for recovering county welfare agency costs. These RRM's were developed by a core team of County staff, California Welfare Directors Association [CWDA] staff and State Department of Social Services [SDSS] staff. SDSS staff were particularly helpful in differentiating specific social service child abuse duties mandated under ICAN from those that are mandated [and funded] under other programs.

Julie Kimura, with SDSS, provided some information that was useful in developing county welfare agency RRM's in her March 19, 2009 e-mail to the ICAN team members. This e-mail, along with its attachments, is found in Exhibit 9. This first attachment, on pages 4-7 of Exhibit 9, provides responses to specific requests for information required to ascertain reasonably necessary and unique ICAN activities. Such requests and responses are as follows:

“REQUEST:

A description of what causes a hotline or other emergency response referral to move forward to a Child Welfare Services (CWS) case.

RESPONSE:

Any referral received by CWS has the potential to become a case. The following activities are mandated by Manual of Policies and Procedures (MPP) Division 31. It should be noted that there are several activities during this process, which are mandated by statute other than Child Abuse and Neglect Reporting Act (CANRA). It should also be noted that counties have different protocols; however, all counties are required to follow the MPP Division 31 regulations. Basic activities leading to the opening of a CWS case per MPP Division 31 regulations are as follows:

Intake (Div. 31-101 through 120.12):

Interview reporting party (intake screener receives phone call) and/or review Suspected Child Abuse Report (SCAR) (form ss 8572).

Fill out Emergency Response Protocol (SOC 423) or approved substitute.

- This includes reviewing CWS history and interviewing by phone, if necessary, any collateral contacts. However, most collateral information would be gathered during the investigation.

Determine response (an assessment tool – Structured Decision Making (SDM) or Comprehensive Assessment tool (CAT)-is used).

Evaluate Out
Differential Response (referral to community based organization)
Immediate in person investigation
Ten day investigation

Response determination approved by supervisor.

Investigation (Div. 31-125 through 135.41):

The social worker shall have in person contact with all children alleged to be abused, neglected or exploited and at least one adult who has information regarding the allegations.

If referral is not unfounded, the social worker shall interview all children present at time of the investigation, and all parents who have access to the children alleged to be at risk of abuse, neglect or exploitation. Interviewing additional children not present at the time of the investigation is at the discretion of the county.

The social worker shall make a determination as to whether services are appropriate (i.e. if allegations are substantiated), and if necessary, file a dependency petition.

The social worker shall request assistance from Law Enforcement if necessary (i.e. safety factors are present or if removal of a child is necessary and the social worker is not deputized.)

If the social worker determines that the child cannot be safely maintained in his/her home, the social worker shall ensure that authority to remove the child exists (if voluntary-written consent from parent/guardian, if involuntary- temporary custody per Welfare and Institutions Code Sections 305 & 306 or Court order).

There are a number of additional activities that could occur, but are not specifically dictated in the Emergency Response Regulations (such as Indian Child Welfare Act requirements, placement regulations, contact with collateral sources, MDIC interviews, etc., but these do not fall under CANRA mandates).

Child Abuse and Neglect Reporting Requirements (Div. 31-501)

The county shall report abuse as defined in Penal Code (PC) Section 11165.6 to law enforcement departments and the District Attorney's office.

When the county receives a report of abuse that has allegedly occurred in a licensed facility, the county shall notify the licensing office with jurisdiction over the facility.

The county shall submit a report pursuant to PC Section 11169 to the Department of Justice of every case it investigates of known or suspected child abuse that it has determined not to be unfounded.

REQUEST:

A break out of training activities/costs associated with investigations and other CANRA reporting activities.

RESPONSE:

The following training activities are required for new CWS social workers and are conducted through Core Training courses which are funded by Title IV-E monies provided to the Regional Training Academies. Core Training does not use the terminology "investigation." Social workers are trained to "assess." These classes include information required to understand and perform all CWS assignments but are focused on Emergency Response duties. They fulfill many other requirements that are unrelated to CANRA mandates.

- Child Maltreatment Identification Part 1: Neglect, Emotional Abuse and Physical Abuse (1.5 days);
- Child Maltreatment Identification Part 2: Sexual Abuse and Exploitation(1.5 days);
- Critical Thinking in Child Welfare Assessment: Safety, Risk and Protective Capacity (1 day);
- Basic Interviewing (1 day).

REQUEST:

Information on activities associated with entering data on CWS/Case Management System (CMS) as the system automatically populates the form.

RESPONSE:

The activities for documenting allegations of a referral are built into CWS/CMS as part of the ER investigation process. Once a referral and the resulting documentation is complete, and if a cross report to Law Enforcement, the District Attorney and/or the Department of Justice is required, the social worker completes the cross report through a CWS/CMS generated report. The report requires placing a checkbox next to the required agency, generating a form which has the majority of necessary information populated from the case record, and writing a brief summary of the investigation which often can be copied from case contact notes.

There is also training provided by CWS/CMS regarding use of the CWS/CMS system which includes filling out the CWS/CMS fields that generate the cross report to DOJ. Training for this process would be included in CWS/CMS new user training and would take less than one hour. The cost of training to fill out the form fields would be considered absorbable within CWS/CMS new user training. All CWS social workers are expected to attend this training, regardless of their unit assignments.”

Julie Kimura also provided important funding information for pertinent ICAN related time study codes used by SDSS. The three codes indentified by Ms. Kimura, which are included in her e-mail on pages 13-14 of Exhibit 9, are:

“Time Study Code 5134 Emergency Assistance – ER Referrals

Includes time spent receiving emergency referrals, assessing whether the referral is a child welfare services referral, completing the ER protocol, and investigating emergency allegations, including collateral contacts. This includes time spent closing those cases in which allegations are unfounded. For those cases that the allegations are not unfounded, it includes time spent in investigation activities, reporting to the California Department of Justice and noticing the parents regarding the temporary custody of the child.

Funding: TANF (85/00/15, federal/state/county share respectively)

Time Study Code 5441 CWS – Minor Parent Investigations (MPI) AB 908

This code has been established to capture social worker time spent performing in-person investigation activities for teen pregnancy disincentive requirements. Investigation activities include:

Completing an in-home investigation of a minor parent’s allegation of risk of abuse/neglect and returning the CA 25s to the eligibility worker indicating the results of the investigation; completing an in-person assessment of the minor parent and his/her child(ren); developing a safety plan that will include MPS for the minor parent and his/her child(ren); and referrals of minor parent to other available services.

Funding: TANF (50/35/15)

Time Study Code 1701 CWS – Emergency Hotline Response

(Code deleted effective with the December 05 quarter and investigation/reporting activities now reported to time study code 5134)

Includes time spent performing initial activities in response to and investigation of all reports or referrals alleging abuse, neglect or exploitation of children. Allowable Emergency Hotline Response activities include, but are not limited to:

Operating a 24-hour emergency hotline response program; evaluating and investigating telephone reports of abuse, neglect or exploitation, including reports on the 24-hour hotline; determining client risk for emergency response by screening in-coming calls; determining whether a reported situation is an emergency or non-emergency within required timeframes; determining emergency response needs; providing crisis intervention; referring clients to appropriate emergency response service agencies; gathering documentation of abuse for law enforcement agencies; documenting and completing all required forms; and preparing written reports and assessments.

Funding: Title IV-E (50/35/15)”

After considerable discussion on how to separate the unique and reasonably necessary ICAN duties from other duties, an RRM survey instrument was devised. This instrument is found in Exhibit 10. Respondents were asked to respond to six groups of questions. The questions and summary results were as follows:

1. “The number of *Child Abuse Summary Report* (SS 8583) forms that were completed by county staff, the average amount of time spent completing the form, and the classification of the worker completing the form.

June 2009 Quarter - Tentative Results:
Eight Counties completed 15,101 SS 8583 forms
Weighted average state-wide time for each form was 22 minutes

2. The number of *Suspected Child Abuse Report* (SS 8572) forms that were completed by county staff, the average amount of time spent completing the form, and the classification of the worker completing the form.

June 2009 Quarter - Tentative Results:
Eight Counties completed 19,469 SS 8572 forms
Weighted average state-wide time for each form was 23 minutes

3. The number of *Notice of Child Abuse Central Index Listing* (SOC 832) forms completed and mailed by county staff, the average amount of time spent completing and mailing the forms, and the classification of the worker completing the forms.

June 2009 Quarter - Tentative Results:
Eight Counties completed 12,394 SOC 832 forms
Weighted average state-wide time for each form was 13 minutes

4. The amount of time required to file copies of the SS 8583 and SS 8572 forms with a copy of the investigative report and the classification of the workers who filed copies of the reports.

June 2009 Quarter - Tentative Results:
Four Counties completed 9,442 form/report filings
Weighted average state-wide time for each form was 22 minutes

5. The number of requests for information the county CWS agency received from DOJ, how much time it took staff to respond to the DOJ inquiries, and the classification of the workers who responded to the inquiries.

June 2009 Quarter - Tentative Results:
Seven Counties responded to 3,585 DOJ requests
Weighted average state-wide time for response was 9 minutes

6. The sources used to get the answers above as well as the methodology used to calculate the average amount of time spent on these activities.

June 2009 Quarter - Tentative Results:
Eight Counties used various sources and methods “

The [above] results are currently tentative and are pending further review. However, the results are incorporated in the County's revised ICAN Ps&Gs as a placeholder. To date, eight counties have responded. These counties serve well over 50 percent of the State's population.

Training, Testing, Due Process Costs

It should be noted that in addition to the standard labor time and costs used in the County's RRM's, cities and counties must incur costs for reasonably necessary training, suspect testing, victim evaluation and due process tasks. Accordingly, these costs are included in the County's revised ICAN Ps&Gs. In particular, reimbursement is provided for:

1. Specialized ICAN training costs for the time of participants and instructors to participate in an annual training session. This activity is reasonably necessary to ensure that cities and counties comply with recent DOJ and related requirements in performing ICAN duties. In addition, this training can provide ‘best practices’ for performing ICAN duties in an effective and cost efficient manner.
2. Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary finding. Reimbursement is provided for the costs of tests and evaluations on suspects as well as victims. Victim costs include those incurred for medical exams for sexual assault and/or physical abuse, mental health exams, and, where the victim dies, for autopsies. Suspect costs include those incurred for DNA and polygraph testing. Also included, when reasonably necessary to make an evidentiary finding, are the costs of video taping interviews of victims and suspects.
3. Due process costs incurred by law enforcement and county welfare agencies to develop and maintain ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ’s Child Abuse Central Index [CACI]. The Court, in Humphries v. County of Los Angeles, 554 F.3d 1170 [2009], noted [here on page 29 of Exhibit 8], that unlike the investigating officer “ ... the County is not entitled to qualified immunity for acting in good faith reliance on state law” and that “... the County is subject to liability under Monell v. Department of Social Services, if a “policy or custom” of the County deprived the Humphries of their constitutional rights”. Reimbursement for the costs of providing these federal constitutional protections is provided for in the County’s revised Ps&Gs as the need to provide them arose entirely under the State mandated ICAN program.

Accordingly, for all of the above reasons, the County revises its ICAN Ps&Gs in the pages to follow. The revised language is *italicized and underlined*.

Los Angeles County
Revised Parameters and Guidelines [Ps&Gs]
Interagency Child Abuse and Neglect Investigation Reports [00-TC-22]

I. SUMMARY OF THE MANDATE

On December 19, 2007 the Commission on State Mandates (Commission) issued a Statement of Decision [00-TC-22] finding, on pages 3-7, that the test claim legislation imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Commission found that, since July 1, 1999, cities and counties are incurring reimbursable costs in implementing ICAN's requirements, including those to: distribute the State Department of Justice [DOJ] Suspected Child Abuse Report form [SS 8572] to mandated reporters; accept and refer initial child abuse reports; cross-report child abuse among designated local agencies; report to the District Attorney and licensing agencies; file additional cross-reports in child death cases; investigate and report [on form SS 8583] suspected child abuse cases to DOJ; notify the suspected abuser that he or she has been reported to DOJ's Child Abuse Central Index; notify the mandated reporter of the investigation results; respond to DOJ requests for information; notify the suspected child abuser that he or she is in DOJ's Child Abuse Central Index; obtain the original investigative report [if previous report(s)] but draw independent conclusions on the current instance; retain investigative reports for seven years or more as specified.

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (c), as amended by Statutes 1998, chapter 681, states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on June 29, 2001, establishing eligibility for fiscal year 1999-2000 for those test claim statutes in effect on July 1, 1999 and later periods as specified under Section IV. Reimbursable Activities herein for test claim statutes in effect subsequent to July 1, 1999.

Actual costs for one fiscal year shall be included in each claim. Estimated costs of the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except where standard cost claiming is permitted as set forth in Section IV.B.

IV.A. Actual Costs

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records, including time survey forms, time logs, sign-in sheets, and, invoices, receipts and unit cost studies using source documents.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to

the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein and as further described in the 2005 "Guide for Reporting Child Abuse to the California Department of Justice", published by the California Department of Justice, attached hereto and incorporated herein by reference. An employee's reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

IV.B. Standard Costs

Specified labor costs may be recovered for performing law enforcement and county welfare agency activities by using standard times set fourth below. These times would then by multiplied by the claimant's blended productive hourly rate, computed in accordance with State Controller's Office claiming instructions to obtain a standard unit cost. This cost is then multiplied by the number of units to determine reimbursable costs.

The standard times for law enforcement agencies are:

Level - 1 No Child Abuse Based on Suspected Child Abuse Report (SCAR) Form

Receive SCAR from Department of Children and Family Services (DCFS); it is determined that no child abuse incident occurred based on SCAR information; SCAR is closed with no action taken. [Standard time is 110 minutes.]

Level - 2 Patrol Investigation and No Child Abuse

Receive SCAR from DCFS; patrol officer investigates and determines no child abuse incident occurred. [Standard time is 268 minutes.]

Level - 3 Child Abuse Investigation with Non-Severe Injuries (Physical & Mental)

Receive SCAR from DCFS; patrol officer investigates and writes a report; detective investigates incident. [Standard time is 934 minutes.]

Level - 4 Child Abuse Investigation Severe Injuries (Physical, Mental, & Sexual)

Receive SCAR from DCFS; patrol officer investigates, takes child to hospital for medical treatment, and writes a report; detective investigates incident. [Standard time is 2,162 minutes.]

The standard times for county welfare agencies are:

1. Completion of the Child Abuse Summary Report (SS 8583) form [Standard time is 22 minutes]

2. Completion of the Suspected Child Abuse Report (SS 8572) form [Standard time is 23 minutes]

3. Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form [Standard time is 13 minutes]

4. Filing copies of the SS 8583 and SS 8572 forms with a copy of the investigative report [Standard time is 22 minutes]

5. Response to DOJ inquires [Standard time is 9 minutes]

IV.C. Reimbursable Activities

The claimant is only allowed to claim and be reimbursed for increased costs for specific reimbursable activities. Claimants may use a combination of actual cost and standard cost methodologies but should take care to ensure that the same reimbursable activity is not claimed under both methods. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Annually, update Departmental policies and procedures necessary to comply with ICAN's requirements.

B. Periodically, meet and confer with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.

C. Annually, train ICAN staff in State Department of Justices' [DOJ] ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate participants and instructors for their time in participating in an annual training session and to provide necessary facilities, training materials and audio visual presentations.

D. Periodically, to develop, update or obtain computer software and obtain equipment necessary for ICAN cross-reporting and reporting to DOJ.

E. Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary finding. Reimbursement is provided for the costs of tests and evaluations on suspects as well as victims. Victim costs include those incurred for medical exams for sexual assault and/or physical abuse, mental health exams, and, where the victim dies, for autopsies. Suspect costs include those incurred for DNA and polygraph testing. Also included, when reasonably necessary to make an evidentiary finding, are the costs of video taping interviews of victims and suspects.

F. Due process costs incurred by law enforcement and county welfare agencies to develop and maintain ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI].

G. Continuously, the following reimbursable activities for local agency departments are:

Distributing the Suspected Child Abuse Report Form

Any City or County police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice currently known as the “ Suspected Child Abuse Report” Form SS 8572) to mandated reporters. (Pen Code, Sec. 11168, formerly Sec. 11161.7)

Reporting Between Local Departments

Accepting and Referring Initial Child Abuse reports when a department takes Jurisdiction:

Any City or County police or sheriff’s department, county probation department if designated by the county to receive mandated reports or county welfare department shall:

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, Sec. 11165.9)

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the law Enforcement Agency with Jurisdiction and the District Attorney’s Office:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney’s office every known or suspected instance of child abuse, as defined in Penal Code section 1116.5 except acts or omissions coming within subdivision 9b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which releases solely to the inability of the parent to provide the child with regular care due to the parent’s substance abuse, which shall be reported only to the county welfare department. (Pen Code Sec. 11166, subd. (h), now subd. (j).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen Code Sec. 11166, subd. (h), now subd. (j).)

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 1116.5 except acts or omissions coming within subdivision 9b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which releases solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.
- This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay." (Pen Code Sec. 11166, subd. (h), now subd. (j).)
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen Code Sec. 11166, subd. (h), now subd. (j).)

Cross-Reporting of Suspected Child Abuse or neglect from the law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

A City or county law enforcement agency shall:

- Report by telephone immediately, or as soon as possible, to the agency given responsibility for investigation of cases under Welfare and Institution Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen Code Sec. 11166, subd. (i), now subd. (k).)
- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen Code Sec. 11166, subd. (i), now subd. (k).)
- Send a written report thereof within 36 hours of receiving the information concerning the incident to nay agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen Code Sec. 11166, subd. (i), now subd. (k).)

Receipt of Cross-Reports by District Attorney's Office:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse repotted to law enforcement, county probation or county welfare

departments, except acts or omissions of general neglect coming within Penal Code section 11165.2 subdivision (b). (Pen Code Sec. 11166, subds. (h) and (i), now subds. (j) and (k).)

Reporting to Licensing Agencies:

Any City or County police or sheriff's department, county probation department if designated by the county to receive mandated report or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care license staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility license or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation reported any other pertinent materials.

As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen Code Sec. 11166.2.)

Additional Cross-Reporting in Cases of Child Death:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen Code Sec. 11166.9, subd. (k), now section 11174.34, subd. (k).)
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen Code Sec. 11166.9, subd. (l), now section 11174.34, subd. (l).)

- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen Code Sec. 11166.9, subd. (l), now section 11174.34, subd. (l).)

Investigation of Suspected Child Abuse, and reporting to and from the State department of Justice

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports or county welfare department shall:

- Complete an investigation to determine whether a report of suspected child abuse or severe neglects is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report: Form SS 8583, or subsequent designated form, to the department of Justice. (Pen. Code, sec. 11169, subd. (a); Cal Code Regs., tit. 11, sec. 903, "Child Abuse Investigation report" Form SS 8583.)
- 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 to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, sec. 11169, subd. (a); Cal. Code regs., tit. 11, sec. 903, "Child Abuse Investigation Report" Form SS 8583.)

Notifications following Reports to the Central Child Abuse Index

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports or county welfare department shall:

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation

report” is filed with the Department of Justice. (Pen Code Sec. 11166.9, subd. (b).)

- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen Code Sec. 11170, subd. (b)(1).)
- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen Code Sec. 11170, subd. (b)(2).)
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reported contained in the index from the Department of Justice when investigating a home for the department children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, sec. 11170, subd. (b)(6).)

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse central Index. (Pen. Code, sec. 11170, subd. (b)(6)(A), now (b)(8)(A).)

Any city or county law enforcement agency, county probation department, or county welfare shall: (j).)

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, sec. 11170, subd. (c).)

Record Retention

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code sections 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, sec. 11169, subd. (c).)

A county welfare department shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for as minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code sec. 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, sec. 11169, subd. (c).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed

reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period

subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Exhibits

Los Angeles County's Revised Parameters and Guidelines Interagency Child Abuse and Neglect Investigation Reports [00-TC-22]

- Exhibit 1: Declaration of Suzie Ferrell, Deputy, Field Operations Support Services, Sheriff's Department, County of Los Angeles
- Exhibit 2: Law Enforcement Standard Time Survey Instrument and Results
- Exhibit 3: Declaration of Daniel Scott, Sergeant, Special Victims Bureau, Child Abuse Detail, Sheriff's Department, County of Los Angeles
- Exhibit 4: Los Angeles County Sheriff's Department Child Abuse Protocol Excerpts
- Exhibit 5: California State Association of Counties and League of California Cities, Interagency Child Abuse and Neglect Survey Instrument, Law Enforcement Activities
- Exhibit 6: Child abuse and Neglect Reporting Act, Task Force Report [2004] Excerpts
- Exhibit 7: Investigation and Prosecution of Child Abuse Manual (Second Edition), The American Prosecutors Research Institute
- Exhibit 8: Humphries v. County of Los Angeles, 554 F.3d 1170 [2009]
- Exhibit 9: Child Abuse and Neglect Reporting Act, State Mandate Claim, Child Welfare Services Funding Information, Julie Kimura, California Department of Social Services, March 19, 2009
- Exhibit 10: Child Abuse and Neglect Reporting Act, County Welfare Time Survey Activities and Results
- Exhibit 11: Declaration of Leonard Kaye, Auditor-Controller Department, County of Los Angeles

Los Angeles County's Revised Parameters and Guidelines Interagency Child Abuse and Neglect [ICAN] Investigation Reports

Declaration of Suzie Ferrell

Suzie Ferrell makes the following declaration and statement under oath:

I, Suzie Ferrell, Deputy, Field Operations Support Services, Sheriff's Department, County of Los Angeles, am responsible for developing and implementing methods and procedures to comply with new State-mandated requirements for conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties.

I declare that I have reviewed the list of steps in performing ICAN duties under four scenarios or levels as follows:

Level - 1 No Child Abuse Based on Suspected Child Abuse Report (SCAR) Form

Receive SCAR from Department of Children and Family Services (DCFS); it is determined that no child abuse incident occurred based on SCAR information; SCAR is closed with no action taken.

Watch Officer opens SCAR from DCFS on computer (via RightFAX)
Watch Officer Prints SCAR for patrol officer
Watch Officer renames SCAR on computer
Watch Officer reviews SCAR for processing
Watch Officer initiates SCAR as a call for service in Computer Aided Dispatch (CAD) system
Watch Officer renames SCAR (adding tag#)
Watch Commander reviews and approved closure of SCAR
Watch Officer enters the closure of the SCAR in CAD

Level - 2 Patrol Investigation and No Child Abuse

Receive SCAR from DCFS; patrol officer investigates and determines no child abuse incident occurred.

Watch Officer opens SCAR from DCFS on computer (Via RightFax)
Watch Officer Prints SCAR
Watch Officer renames SCAR on computer
Watch Officer Reviews SCAR for processing
Watch Officer initiates SCAR as a call for service in CAD
Watch Officer renames SCAR (adding tag#)
Dispatch Officer assigns call to patrol officer
Patrol Officer receives call for service and acknowledges call
Patrol Officer interviews child
Patrol Officer interviews parents, siblings, witness, suspect
Patrol Officer enters closure of the SCAR in CAD

Level - 3 Child Abuse Investigation with Non-Severe Injuries (Physical & Mental)

Receive SCAR from DCFS; patrol officer investigates and writes a report; detective investigates incident.

Watch Officer opens SCAR from DCFS on computer (via RightFax)
Watch Officer prints SCAR
Watch Officer renames SCAR
Watch Officer reviews SCAR

Watch Officer initiates SCAR as a call for service in CAD
Watch Officer renames SCAR (adding tag#)
Dispatch Officer assigns call to Officer
Patrol Officer receives call for services and acknowledges call
Patrol Officer initial interview with child
Patrol Officer interview of parents, siblings, witnesses, suspects
Patrol Officer collects evidence (pictures, etc.)
Patrol Officer books evidence in to station
Patrol Officer writes child abuse incident report
Sergeant's approval of report
Secretary SSCII enters information in to LARCIS
Secretary SSCII copies, processes to detectives, and files report
Watch Officer renames SCAR as completed
Detective conducts Criminal History check
Detective collaborates with DCFS/CSW
Detective receives report and reviews
Detective reviews evidence
Detective interviews child
Detective interviews witnesses
Detective interviews suspect
Detective writes additional reports
Detective Sergeant approves reports and arrest
Secretary OAI – Tracking, filing, file preparation, etc.
Detective arrests suspect and book suspect

Detective presents all documentation and evidence to District Attorney's Office
Detective completes DOJ/CACI form
Detective completes DOJ/CACI advisement form (to suspect)
Detective completes Mandated Reporter notification form

Level - 4 Child Abuse Investigation Severe Injuries (Physical, Mental, & Sexual)

Receive SCAR from DCFS; patrol officer investigates, takes child to hospital for medical treatment, and writes a report; detective investigates incident.

Watch Officer opens SCAR from DCFS on computer (via RightFax)
Watch Officer prints SCAR
Watch Officer renames SCAR
Watch Officer reviews SCAR
Watch Officer initiates SCAR as a call for service in CAD
Watch Officer renames SCAR (adding tag#)
Dispatch Officer assigns call to patrol Officer
Patrol Officer receives call for services and acknowledges call
Patrol Officer initial interview with child
Patrol Officer interview of parents, siblings, witnesses, suspects
Patrol Officer collects evidence (pictures, etc.)
Patrol Officer - Sexual Assault and/or Physical Abuse Medical Exam at Hospital
Patrol Officer books evidence in to station
Patrol Officer writes child abuse incident report
Sergeant's approval of report

Secretary SSCII enters information in to LARCIS
Secretary SSCII copies, processes to detectives, and files report
Watch Officer renames SCAR as completed
Detective conducts Criminal History check
Detective collaborates with DCFS/CSW
Detective receives report and reviews
Detective reviews evidence
Detective - Forensic interview with child
Detective interviews witnesses
Detective interviews suspect
Detective - Consultation with Expert medical Professionals
Detective - Polygraph
Detective - DNA Retrieval
Detective - Review School Records
Detective - Crime scene/victim diagram/photography
Detective - Multi-Disciplinary Team Case Review
Detective writes reports
Detective Sergeant approves report and arrest
Detective - Search Warrant Prep, Ops Plan, and service of warrant
Detective - Protective Custody
Secretary OAI - Tracking, filing, file preparation, etc.
Detective arrests suspect and book suspect
Detective presents all documentation and evidence to District Attorney's Office

Detective completes DOJ/CACI form
Detective completes DOJ/CACI advisement form (to suspect)
Detective completes Mandated Reporter notification form

I declare that I developed the list of steps in performing ICAN duties under scenarios 1 and 2 as detailed above and in Exhibit 2, attached to this filing.

I declare that I obtained the list of steps in performing ICAN duties under scenarios 3 and 4 as detailed above and in Exhibit 2, attached to this filing, from Sergeant Daniel Scott with the Los Angeles County Sheriff's Department, Family Crimes Bureau, Child Abuse Detail.

I declare that it is my information and belief that the ICAN steps described in Exhibit 2 for each of four scenarios are reasonably necessary in conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties.

I declare that I met and conferred with law enforcement officials throughout the State as well as staff representing State associations in developing a survey instrument to derive standard times in performing ICAN steps encompassed within each of the four scenarios, detailed in Exhibit 2.

I declare that it is my information and belief that the average or standard time for each ICAN step, which is found in Exhibit 2, is based on a representative sample of law enforcement agencies.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and to those matters, I believe them to be true.

1/12/10 Commerce, CA
Date and Place

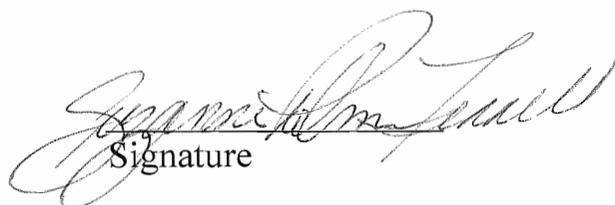

Signature

Exhibit 2

LOS ANGELES COUNTY SHERIFF DEPARTMENT Child Abuse Levels for SB90 Reimbursement

SCAR – Department of Justice’s Suspected Child Abuse Report form

DCFS – Department of Children and Family Services (Los Angeles County’s children’s services department)

Watch Officer – Officer working the station who assigns calls to field officers

CAD – Computer Aided Dispatch software system used by Los Angeles County Sheriff’s Department for dispatching calls for services

Level - 1 No Child Abuse Based on SCAR

Receive SCAR from DCFS; it is determined that no child abuse incident occurred based on SCAR information; SCAR is closed with no action taken.

Duty	LASD Time Minutes	STATE Time Minutes
Watch Officer opens SCAR from DCFS on computer (via RightFAX)	1	8
Watch Officer Prints SCAR for patrol officer	2	7
Watch Officer renames SCAR on computer	2	7
Watch Officer reviews SCAR for processing	5	13 (a)
Watch Officer initiates SCAR as a call for service in CAD	2	22
Watch Officer renames SCAR (adding tag#)	2	2
Watch Commander reviews and approved closure of SCAR	5	45 (b)
Watch Officer enters the closure of the SCAR in CAD	10	6
TOTALS FOR LEVEL 1	29	110

Notes

(a) Includes two statewide categories – “review Scar” (4 minutes) and “research abuse history and related crimes” (9 minutes).

(b) Includes two statewide categories – “review and approve closure of Scar” (22 minutes) and “completes closure of the SCAR” (23 minutes).

Level - 2 Patrol Investigation and No Child Abuse

Receive SCAR from DCFS; patrol officer investigates and determines no child abuse incident occurred.

Duty	LASD Time Minutes	STATE Time Minutes
Watch Officer opens SCAR from DCFS on computer (Via RightFax)	1	7
Watch Officer Prints SCAR	2	7
Watch Officer renames SCAR on computer	2	18 (a)
Watch Officer Reviews SCAR for processing	5	19 (b)
Watch Officer initiates SCAR as a call for service in CAD	2	7
Watch Officer renames SCAR (adding tag#)	2	0
Dispatch Officer assigns call to patrol officer	1	8
Patrol Officer receives call for service and acknowledges call	1	8
Patrol Officer interviews child	30	43
Patrol Officer interviews parents, siblings, witness, suspect	30	47
Patrol Officer enters closure of the SCAR in CAD	10	104 (c)
TOTALS FOR LEVEL 2	86	268

Notes

- (a) Includes two statewide categories – “renames SCAR” (7 minutes) and “rename SCAR” (11 minutes).
 (b) Includes two statewide categories – “review SCAR Details” (8 minutes) and “Review/Research history & related crimes” (11 minutes).
 (c) Includes five statewide categories – “Completes closure of the SCAR” (27 minutes), “Complete closure of the SCAR” (40 minutes), “Review & approve closure of SCAR” (16 minutes), “Data entry into the database” (6 minutes), and “Notify CPS” (15 minutes).

Level - 3 Child Abuse Investigation with Non-Severe Injuries (Physical & Mental)

Receive SCAR from DCFS; patrol officer investigates and writes a report; detective investigates incident.

Duty	LASD Time Minutes	STATE Time Minutes
Watch Officer opens SCAR from DCFS on computer (via RightFax)	1	6
Watch Officer prints SCAR	2	8
Watch Officer renames SCAR	2	7
Watch Officer reviews SCAR	5	19 (a)
Watch Officer initiates SCAR as a call for service in CAD	2	6
Watch Officer renames SCAR (adding tag#)	2	2
Dispatch Officer assigns call to Officer	1	8
Patrol Officer receives call for services and acknowledges call	1	5
Patrol Officer initial interview with child	60	53
Patrol Officer interview of parents, siblings, witnesses, suspects	60	70
Patrol Officer collects evidence (pictures, etc.)	60	38
Patrol Officer books evidence in to station	30	30
Patrol Officer writes child abuse incident report	90	80
Sergeant's approval of report	5	21
Secretary SSCII enters information in to LARCIS	15	17
Secretary SSCII copies, processes to detectives, and files report	10	14
Watch Officer renames SCAR as completed	2	52 (b)
Detective conducts Criminal History check	30	16
Detective collaborates with DCFS/CSW	30	34
Detective receives report and reviews	30	20 (c)
Detective reviews evidence	30	20 (c)
Detective interviews child	120	67
Detective interviews witnesses	120	52 (d)
Detective interviews suspect	120	52 (d)

Duty	LASD Time Minutes	STATE Time Minutes
Detective writes additional reports	120	99
Detective Sergeant approves reports and arrest	30	31
Secretary OAI – Tracking, filing, file preparation, etc.	40	40
Detective arrests suspect and book suspect	120	10
Detective presents all documentation and evidence to District Attorney's Office	120	10
Detective completes DOJ/CACI form	15	17
Detective completes DOJ/CACI advisement form (to suspect)	10	16
Detective completes Mandated Reporter notification form	10	14
TOTALS FOR LEVEL 3	1,293	934

Notes

- (a) Includes two statewide categories – “review SCAR Details” (8 minutes) and “Review/Research history & related crimes” (11 minutes).
- (b) Includes four statewide categories – “completes closure of scar” (31 minutes), “Rename SCAR as completed” (10 minutes), “data entry into the database” (5 minutes) and “rename SCAR” (6 minutes).
- (c) LASD categories of “detective receives report and reviews” and “Detective reviews evidence” were combined in the statewide survey category of “D. receives/reviews report & evid.” (40 minutes). The 40 minutes are allocated between each of the two LASD categories – at 20 minutes for each LASD category.
- (d) LASD categories of “Detective interview witnesses” and “Detective interviews suspect” were combined in the statewide survey category of “D. interviews witnesses & suspect” (104 minutes). The 104 minutes are allocated between each of the two LASD categories – at 52 minutes for each LASD category.

Level - 4 Child Abuse Investigation Severe Injuries (Physical, Mental, & Sexual)

Receive SCAR from DCFS; patrol officer investigates, takes child to hospital for medical treatment, and writes a report; detective investigates incident.

Duty	LASD Time Minutes	STATE Time Minutes
Watch Officer opens SCAR from DCFS on computer (via RightFax)	1	6
Watch Officer prints SCAR	2	8
Watch Officer renames SCAR	2	7
Watch Officer reviews SCAR	5	19 (a)
Watch Officer initiates SCAR as a call for service in CAD	2	6
Watch Officer renames SCAR (adding tag#)	2	23 (b)
Dispatch Officer assigns call to patrol Officer	1	6
Patrol Officer receives call for services and acknowledges call	1	5
Patrol Officer initial interview with child	60	53
Patrol Officer interview of parents, siblings, witnesses, suspects	60	77
Patrol Officer collects evidence (pictures, etc.)	60	61
Patrol Officer - Sexual Assault and/or Physical Abuse Medical Exam at Hospital	360	144
Patrol Officer books evidence in to station	30	44
Patrol Officer writes child abuse incident report	180	111
Sergeant's approval of report	5	26
Secretary SSCII enters information in to LARCIS	15	21
Secretary SSCII copies, processes to detectives, and files report	10	14
Watch Officer renames SCAR as completed	2	5
Detective conducts Criminal History check	30	17
Detective collaborates with DCFS/CSW	30	42
Detective receives report and reviews	30	30 (c)
Detective reviews evidence	240	31 (c)
Detective - Forensic interview with child	240	84
Detective interviews witnesses	120	55 (d)

Duty	LASD Time Minutes	STATE Time Minutes
Detective interviews suspect	120	56 (d)
Detective - Consultation with Expert medical Professionals	120	73
Detective - Polygraph	240	140
Detective - DNA Retrieval	30	29
Detective - Review School Records	60	50
Detective - Crime scene/victim diagram/photography	90	104
Detective - Multi-Disciplinary Team Case Review	120	91
Detective writes reports	240	161
Detective Sergeant approves report and arrest	30	50
Detective - Search Warrant Prep, Ops Plan, and service of warrant	480	228
Detective - Protective Custody	120	122
Secretary OAI - Tracking, filing, file preparation, etc.	40	50
Detective arrests suspect and book suspect	120	20
Detective presents all documentation and evidence to District Attorney's Office	120	24
Detective completes DOJ/CACI form	15	25
Detective completes DOJ/CACI advisement form (to suspect)	10	24
Detective completes Mandated Reporter notification form	10	20
TOTALS FOR LEVEL 4	3,453	2,162

Notes

(a) Includes two statewide categories – “review SCAR Details” (8 minutes) and “Review/Research history & related crimes” (11 minutes).

(b) Includes three statewide categories – “Rename SCAR as completed” (11 minutes), “data entry into the database” (5 minutes) and “rename SCAR” (6 minutes).

(c) LASD categories of “detective receives report and reviews” and “Detective reviews evidence” were combined in the statewide survey category of “D. receives/reviews report & evid.” (61 minutes). The 61 minutes are allocated to the LASD categories at 30 minutes for the report category and 31 minutes for the evidence category.

(d) LASD categories of “Detective interview witnesses” and “Detective interviews suspect” were combined in the statewide survey category of “D. interviews witnesses & suspect” (111 minutes). The 111 minutes are allocated to the LASD witness category at 55 minutes and the LASD suspect category at 56 minutes.

Level - 5 High Volume/Visibility Child Abuse Investigation

This type of investigation will involve, but is not limited to: a child's death; kidnapping; serial perpetrator; perpetrator who is an authority figure such as a teacher, police officer, counselor, doctor, care provider; multiple victims from a daycare center, school, camp, religious group, Boy/Girl Scouts. These investigations will be submitted to the State on an individual basis with an accounting of time expended by the law enforcement agency.

**Los Angeles County's Revised Parameters and Guidelines
Interagency Child Abuse and Neglect [ICAN] Investigation Reports**

Declaration of Daniel Scott

Daniel Scott makes the following declaration and statement under oath:

I, Daniel Scott, a Sergeant with the Los Angeles County Sheriff's Department, Special Victims Bureau, Child Abuse Detail of the County of Los Angeles, am responsible for conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties.

I declare that I have over 29 years of law enforcement experience, including more than 22 years of service in the Los Angeles County Sheriff's Department Family Crimes Bureau as a detective and sergeant specializing in child abuse investigations.

I declare that I have developed and coordinated the law enforcement curriculum for Los Angeles County's Department of Children and Family Services' Bureau of Child Protection Inter-Agency Investigative Academy.

I declare that I have lectured for the California Sexual Assault Investigators Association, the American Prosecutors Research Institute, Childhelp USA, and Children's Institute International.

I declare that I have co-authored an article entitled "Silent Screams – One Law Enforcement Agency's Response to Improving the Management of Child Abuse Reporting and Investigations", published in the 2001-02 issue of the Journal of Juvenile Law (22 J. Juv. L. 29).

I declare that I have reviewed the ICAN activities described in Exhibit 4, attached to this filing.

I declare that it is my information and belief that the ICAN activities described in Exhibit 4 are reasonably necessary in conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties.

I declare that I have reviewed the list of steps in performing ICAN duties under four scenarios detailed in Exhibit 2, attached to this filing.

I declare that it is my information and belief that the ICAN steps described in Exhibit 2 for each of four scenarios are reasonably necessary in conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties.

I declare that the California Department of Justice (DOJ) Form SS 8583, as revised in June 2005, defines an “active investigation” in response to a report of known or suspected child abuse as including, at a minimum:

“... assessing the nature and seriousness of the suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es); gathering and preserving evidence; determining whether the incident is substantiated, inconclusive or unfounded; and preparing a report that will be retained in the files of the investigative agency.”

I declare that it is my information and belief that the omission of one or more ICAN activities described in Exhibit 4 or ICAN steps described in Exhibit 2 could impair the requirement to conduct an “active investigation” as defined in the California Department of Justice (DOJ) Form SS 8583, as revised in June 2005.

I declare that it is my information and belief that the omission of one or more ICAN activities described in Exhibit 4 or ICAN steps described in Exhibit 2 could impair the determination of whether the incident is substantiated, inconclusive or unfounded.

I declare that Form SS 8583 states that a determination that an incident is inconclusive occurs when there is “... insufficient evidence of abuse, not unfounded (incident)”.

I declare that Form SS 8583 requires that a determination that an incident is inconclusive be reported to DOJ and that DOJ will list inconclusive suspect(s) in their Child Abuse Central Index (CACI).

It is my information and belief that the omission of one or more ICAN activities described in Exhibit 4 or ICAN steps described in Exhibit 2 could result in a finding of insufficient evidence of abuse and that further investigation could provide sufficient evidence, thereby avoid listing an innocent person as a ‘suspect’ in the CACI.

Accordingly, it is my information and belief that the activities described in Exhibit 4 and steps described in Exhibit 2 are reasonably necessary in performing ICAN duties.

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

1-8-10 @ WHITTIER, CA
Date and Place


Signature

Exhibit 4

Los Angeles County Sheriff's Department Child Abuse Protocol Excerpts

Los Angeles County's public safety agencies are diverse in size and responsibility. Law enforcement services are provided by city police departments or by the Los Angeles County Sheriff's Department. In addition, other county, state, federal, school police, probation, and prosecutorial agencies provide specific law enforcement services to county residents and visitors. State law or agency policy requires most members of these agencies to receive reports and to take action when they learn that a child under age 18 is the victim of suspected child abuse or neglect.

Law enforcement agencies whose responsibilities include the criminal investigation of child abuse are also diverse in administrative structure. Many agencies have investigative units or detective bureaus comprised of one or two investigators who generally handle child abuse cases. Investigators also may be assigned other crimes to investigate in addition to child abuse allegations. Other agencies may be structured with many investigators who specialize exclusively in child abuse matters including child homicide.

Not all law enforcement agencies in the county have as a primary responsibility the investigation of crime. Many agencies rarely become involved in an incident of child abuse or a child welfare issue and must rely on another agency to complete an investigation and assume control over protective custody issues.

Immediate Response by Law Enforcement

Law enforcement officers receive child abuse reports either directly from a citizen complaint or through a mandatory report or cross report. In response, a law enforcement officer should conduct an initial assessment to determine the immediacy of the response required. Law enforcement officers should be vigilant to situations, conditions, or incidents that suggest that a child's safety or well-being may be in danger, that the basic necessities of life are not being provided by a parent or caretaker, or that a crime may have occurred. By providing high priority to calls for service involving child abuse, law enforcement will help ensure that its efforts are maximized in gathering evidence and preserving the critical testimony required for a successful prosecution.

Priority status should be assigned to incidents of child abuse when

- a child is dead
- the child is hospitalized or receiving to emergency medical treatment
- physical evidence or bodily fluids and material can be preserved
- a crime scene requires processing
- shaken baby syndrome⁶, head injuries, burns, fractures, or severe neglect is alleged or uncovered
- DCFS, a school authority, or other mandated reporter requests police intervention
- the suspect is a flight risk, may influence the victim's testimony, may confess to the crime, or poses a significant risk of harm to the victim

Law enforcement officers who respond to take the first report should

- determine whether a crime may have occurred. If so, conduct an investigation regardless of the action taken by DCFS.
- request that a CSW respond if investigating an incident with potential placement issues
- collect all physical evidence relevant to the case including, but not limited to
 - clothing
 - bedding
 - photographs
 - computer hardware and software
 - videotapes
 - sex toys
 - condoms
 - blood or bodily fluids
 - weapons

⁶ "Shaken baby syndrome" is a traditional and commonly used term. However, there is a national trend to use "abusive head trauma" to refer to the constellation of non-accidental head injuries resulting from child abuse. This term is preferred because reference to a "syndrome" is becoming disfavored by many courts.

- other items which corroborate the child's allegations
- document the crime scene and injuries of the victim and the suspect by photographs or videotape when appropriate

If the initial responding officer is not experienced in child abuse investigation, the officer should obtain only basic information, gather evidence, make independent observations, and make notifications. Pursuant to agency protocol and the circumstances of the incident, more detailed information should be obtained by an experienced child abuse investigator at a later time. Traumatized, uncooperative, or non-communicative victims are examples of child victims who should be interviewed by an experienced child abuse investigator.

When child victims are in police facilities in connection with a criminal or dependency matter, law enforcement shall strive to provide a physical environment that is conducive to effective interviewing. It should be comfortable, adequately furnished, well lit, and not within sight or hearing distance of the accused offender, prisoners, or jail inmates.

Investigators should evaluate each case to determine which are appropriate for early involvement by a prosecutor. When appropriate, investigators should contact prosecuting attorneys so they may be involved early in the child abuse investigation process.

If allegations involving physical abuse and/or neglect are reported, law enforcement is encouraged to visually examine the child. Thoroughness requires that disrobing the child may be necessary, particularly with pre-verbal children.

All agencies are encouraged to develop a policy with suggested practices for the disrobing of children that provides for the least intrusive means to conduct the examination while maintaining privacy and preserving the dignity of the child. Protocols should address issues such as

- the appropriate age at which the examination should be conducted only by a same-sex officer
- how to address visual examinations of pre-verbal and non-verbal children where reasonable cause exists to believe that there may be injuries not readily visible
- how to address examinations and/or interviews for other children residing in the home of a child believed to be a victim of abuse or neglect

It is inappropriate for officers to examine genitalia as part of a sexual assault investigation; however, in certain physical abuse cases it may be appropriate.

When a child who is the victim of child abuse is removed from school by a law enforcement officer, the officer should direct the school official not to disclose the child's removal to the parent or guardian. This is an exception to the school official's general obligation to inform a child's parent or guardian when a child is removed from school by a peace officer under circumstances other than child abuse or neglect.

Pursuant to Educ C §48906, the officer removing the child from the school environment shall obtain the parent or guardian's address and telephone number and shall take immediate steps to notify the parent, guardian, or responsible relative of the child that the child is in custody in a facility authorized by law. The code further states that the officer must disclose the location of the child unless the officer has a reasonable belief that the child would be endangered by such a disclosure or the custody of the child is likely to be disturbed. The officer may refuse to disclose the place where the child is being held for a period not to exceed 24 hours. However, in all cases where a child is taken into custody, WIC §308(a) mandates that the law enforcement officer or social worker take immediate steps to notify the child's parent, guardian, or a responsible relative that the child is in custody and that the child has been placed in a facility authorized by law to care for the child and shall provide a telephone number at which the child may be contacted. The confidentiality of the address of any licensed foster family home in which the child has been placed shall be maintained until the dispositional hearing.

Recommendations for Cooperative Field Response

Initial Contact

All professionals should respond as promptly as possible; however, to the extent possible, an interview should not begin before the other agency has arrived.

Law enforcement and DCFS shall cross report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings. {PC §11166.9(k)} A report also must be made to the Child Abuse Central Index [CACI]. {PC §11169(b)}

Crime Scene Preservation

All professionals must avoid disturbing potential forensic evidence and are directed to communicate the existence and any location of potential forensic evidence to law enforcement.

Potential forensic evidence may include but is not limited to

- clothing
- bedding
- photographs
- computer hardware and software
- videotapes
- sex toys
- condoms
- blood or bodily fluids
- weapons
- other items which corroborate the child's allegations

Medical Needs

When appropriate, victims of sexual abuse, physical abuse, or neglect should be examined by a medical expert with specialized training as soon as possible. If sexual abuse is believed to have occurred within the last 72 hours, the examination should be immediate. If the child is in protective custody, the medical examination guidelines set forth in WIC §324.5 should be followed.

Law enforcement and DCFS shall strive to identify and use hospitals and medical facilities with staff qualified to conduct physical examinations of children to detect sexual abuse or physical trauma. Law enforcement shall continually strive to use service providers with medical and nursing staff willing to offer expert testimony in a judicial setting concerning their findings about a child abuse examination. [See Index of Appendices for a list of Resources for Forensic Evaluation.]

Interviews of Victims and Witnesses

General provisions

Except in unusual circumstances, multiple interviews with child victims and witnesses should be limited. Professionals are encouraged to conduct interviews jointly. Where possible and appropriate, the prosecutor should be included in the investigative interviews to minimize the trauma to the child victim caused by multiple interviews. Interviews should be conducted as follows

- parties contacting a child should introduce themselves, explain their roles, identify other strangers by name, and indicate briefly what the child can expect
- use simple, understandable language
- use open-ended questions, not leading questions during the interviews
- conduct interviews outside the presence of other victims, witnesses and suspects
- conduct interviews with the utmost sensitivity to the child
- build rapport with the child

Law enforcement and DCFS should be aware that certain court proceedings may permit the admissibility of statements and disclosures made by young victims in child abuse cases that are not normally admitted in other types of criminal proceedings. Therefore, all statements should be carefully documented.

Teachers, counselors, school nurses, and others at the child's school can be important sources of information when investigating allegations of possible child abuse. Interviewing the mandated reporter can reveal first-hand information about the child's behavior, appearance, attendance, health [physical and emotional], and interaction between school personnel and the child's parents. This information can provide the investigator with insight into the school employee's concerns and perceptions, allowing a more accurate and objective assessment of the child's actual situation.

Interviews of the child conducted at the child's school

An interview may be conducted on the child's school premises during school hours.

Children interviewed at school have a right to be interviewed in private or to select any adult who is a school staff member to be present at the interview for support. The CSW or law enforcement officer must inform the child of the right to a support person before the interview. The child should be asked outside the presence of any school staff member whether or not the

child would like a staff member to be present. It is up to the child whether or not a support person will be present.

The staff member's presence is only to lend support to the child and to allow the child to be comfortable during the interview. The staff member may not participate in the interview and shall not discuss the facts of the case with the child. The staff member is subject to the confidentiality requirements mandated under PC §11167.5.

The selected staff member may decline to be present at the interview. If the staff member does attend the interview at the request of the child, the interview shall be performed at a time during school hours when it does not involve an expense to the school. {PC §11174.3}

Victim's right to presence of an advocate

A victim of sexual assault within the meaning of PC §§243(e), 261, 261.5, 262, 286, 288a, or 289 has a right to have victim advocates and one support person of the victim's choosing present at any interview by law enforcement, district attorneys, or defense attorneys. Before the beginning of an initial interview by law enforcement or district attorneys, a victim shall be notified of this right. The support person may be excluded from an interview if the interviewer determines that his or her presence would be detrimental to the purpose of the interview. The victim advocate may not be excluded. {PC §679.04(b)}

Interviewers should be sensitive to the fact that children can be particularly vulnerable to the possibility of undue influence, coercion, or intimidation by a support person who has a prior relationship with the child or the abuser.

An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section. {PC §679.04(c)}

First Responders' Interview with the Suspect

If necessary, interview the suspect to get his or her account of the incident. Avoid providing the suspect with unnecessary details or the nature of the allegations. Whenever possible, medical or other corroborating evidence should not be disclosed. During the follow-up investigation, a more thorough interview may be conducted by a specially trained investigator.

Documentation

Agencies are required to document their activities in response to child abuse allegations. Each agency must memorialize its actions at each stage of the case to provide an accurate historical record. All relevant information obtained shall be included in the documentation.

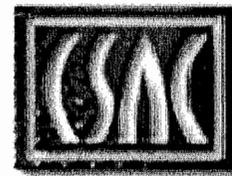
Child Death Investigations

Responding officers are responsible for investigating and securing all possible crime scenes for subsequent forensic examination [photographs, collection of biological samples, or fingerprints]. The location of the child upon first observation may not be the location of the abuse. Initial identifying information interviews with parents, caretakers, relatives, or siblings at the scene, and emergency treatment personnel should be conducted expeditiously. Secure and recover any objects, clothing, furniture, weapons, or other instrumentality potentially related to the crime. When siblings are present, notify the Child Protection Hotline [CPH] for investigation of possible risk to the siblings.

Ideally, the investigating officer will be experienced in both child abuse and homicide investigations. If not, it is recommended that the law enforcement agency employ a collaborative approach between trained investigators in both disciplines within the agency to ensure that the following elements are covered during the investigation

- **determine whether prior contacts concerning the child exist involving current or prior abuse of the child or any siblings**
- **determine whether there are any prior contacts alleging domestic violence in the home, other crimes of violence, weapons offenses, drug offenses, or dependency intervention**
- **follow-up interviews with medical personnel including EMTs, paramedics, nurses, physicians, the hospital social worker, and the coroner**
- **interview the parent(s), caretakers, siblings, other relatives, neighbors, school officials, the family physician, and any mandated reporter regarding the child's history as well as the causes of the child's current injuries**
- **thoroughly examine all potential crime scenes to ensure proper documentation through forensic crime scene collection including photographs, collection of samples for scientific analysis, and retrieval of all instrumentalities related to the child's current injuries**
- **obtain current medical records documenting treatment for the presenting injuries, a complete medical history of the child, a recent photo of the child prior to the current injury, DCFS records, dependency court records, and medical records on any siblings who have also suffered prior abuse**
- **consult forensic pediatric experts regarding allegations of accidental injury, shaken baby syndrome, sudden infant death, birth defects, severe neglect, starvation, failure to thrive, or any special needs of the child [developmental disabilities, visual impairment, hearing deficiency, motor impairment] and obtain opinions from them in writing**

- **consider using polygraph examinations as an investigative tool to eliminate suspects and elicit additional evidence because any statements made during the course of the exam may be admissible in court**
- **video tape the suspect's reenactment of the events and/or the scene utilizing the statements given by the suspect**
- **create a battered-child timeline to reflect when, where, and how previous injuries occurred; the suspect's statements as to how the injuries occurred; who had control of the child and when each person had control; and the medical evidence as to the injuries**
- **consider whether to request a skeletal trauma series of an injured child for the purpose of revealing old fractures**
- **locate all previous medical records documenting the child's medical history and the location of treatment**



**INTERAGENCY CHILD ABUSE AND NEGLECT (ICAN)
SURVEY OF LAW ENFORCEMENT ACTIVITIES**

Please Complete & Return by February 9, 2009

Please return it to either:

League of California Cities

Kanat Tibet by e-mail to kanattibet@cacities.org; Fax to 916-658-8240

By mail to League of California Cities, 1400 K Street, Sacramento, CA 95814

California State Association of Counties

Geoffrey Neill by e-mail to gneill@counties.org, by Fax to 916-321-5070

By mail to CSAC, 1100 K Street, Suite 101, Sacramento, 95814

The purpose of this document is to identify activities that are reasonably necessary to carry out the state mandated activities by law enforcement to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inclusive for purposes of preparing and submitting the DOJ Child Abuse Investigation Report form. The survey goal is to identify the time and classification of employee(s) that complete the work in order to develop a statewide average or standard time that can be assigned to the performance of those activities. Those standard times can then be used by local agencies to claim state reimbursement in lieu of state's requirement to provide actual time documentation of each case.

Contact Information:

Person that can be contacted regarding the information reported on this survey:

Agency: _____

Name: _____

Title: _____

Phone: _____

Email: _____

Investigation of SCAR Reports

The reimbursable state mandate activities are those necessary to complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, for purposes of reporting and submitting the DOJ Child Abuse Investigation Report form. Law enforcement is required 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 to be substantiated or inconclusive. Unfounded reports shall *not* be filed with the DOJ. In an attempt to develop uniform time allowances for completing the mandated activities, the survey seeks information on four types of cases by the level of severity. The four levels are:

Level 1 – No Child Abuse Based on SCAR – the department receives SCAR from CPS and it is determined that no child abuse incident occurred based on SCAR information; SCAR is closed with no further action necessary.

Level 2 – Patrol Investigation and No Child Abuse – department receives SCAR from CPS; patrol deputy investigates and determines no child abuse incident occurred.

Level 3 – Child Abuse Investigation with Non-severe Injuries (Physical & Mental) – department receives SCAR from CPS: patrol deputy investigates and there is an apparent criminal incident of child abuse, but there are no severe physical or mental injuries.

Level 4 – Child Abuse Investigation Finds Severe Injuries (Physical, Mental and/or Sexual) – department receives SCAR from CPS and a deputy sheriff or police officer responds and there is an apparent criminal incident of severe physical, mental and/or sexual abuse.

Level 5 – Very Severe or Unusual Cases (not included in this survey)

Once the Commission on State Mandates adopts a standard time for the above four level or cases, it will be proposed that a local agency can either take the standard time for Level 4 cases or maintain actual time documentation for Level 5 cases. Level 5 cases are the very serious cases such as those that involve a kidnapping; serial perpetrator; perpetrator who is an authority figure such as a teacher, police officer, counselor, doctor, care provider. Level 5 cases may include multiple victims from a daycare center, school, camp religious group, Boy/Girl Scouts or other similar situations.

SURVEY REPORTING PROCESS & GENERAL INFORMATION

GENERAL INFORMATION:

Listed below are the traditional law enforcement classifications and space to add any other classifications in the agency's department that spend time on the mandated activities. Please provide the FY 2007-08 salary data for each classification. If your agency's salary range changed during the year, please report the salary range that was in effect on January 1, 2008. The "Survey Code" is the number that you should use in reporting which classifications complete the various activities included in the next section of this survey.

Agency: _____

Classifications that participate in child abuse reporting and investigation:

<u>Sworn Employee Classifications</u>	<u>Survey Code</u>	<u>FY 2007-08 Salary Range (Salaries as of January 1, 2008)</u>
Police Officer or Deputy Sheriff	O	_____
Sergeant	S	_____
Detective	D	_____
Lieutenant	LT	_____
Other: _____	F	_____
Other: _____	G	_____
<u>Civilian Employee Classifications</u>		
Dispatcher	DIS	_____
Records Clerk	RC	_____
Other: _____	C-1	_____
Other: _____	C-2	_____

Note on Travel Time: At this time, please do not enter any travel time associated with any of the tasks below. Travel time will be determined separately.

LEVEL INFORMATION

The remainder of this survey is designed to identify the activities or tasks required to complete each activity associated with one of the four levels of case severity; the classification(s) of the department's sworn or civilian staff that completed the activities, and the estimated minimum, maximum and average time spent. Please use the above Classification Survey Codes to identify the employee classification.

Level 1 – No Child Abuse Based on SCAR – the department receives SCAR from CPS and it is determined that no child abuse incident occurred based on SCAR information; SCAR is closed with no further action necessary.

Steps or Activities: (Enter added tasks)	Class Code	Min Time	Max Time	Average Time
1 Open SCAR from CPS				
2 Prints SCAR				
3 Renames SCAR				
4 Initiate SCAR as a call for service				
5 Review & approve closure of SCAR				
6 Completes closure of the SCAR				
7				
8				

Level 2 – Patrol Investigation and No Child Abuse – department receives SCAR from CPS; patrol deputy investigates and determines no child abuse incident occurred.

Steps or Activities: (Enter added tasks)	Class Code	Min Time	Max Time	Average Time
1 Open SCAR from CPS				
2 Prints SCAR				
3 Renames SCAR				
4 Review SCAR details				
5 Initiate a call for service				
6 Completes closure of the SCAR				
7 Rename SCAR				
8 Dispatch/assign call to duty				
9 Officer receives & acknowledges call				
10 Interview with child				
11 Interview with parents, et.al				
12 Complete closure of the SCAR				
13				
14				

Level 3 – Child Abuse Investigation with Non-severe Injuries (Physical & Mental) – department receives SCAR from CPS: patrol deputy investigates and there is an apparent criminal incident of child abuse, but there are no severe physical or mental injuries.

Steps or Activities: (Enter added tasks)	Class Code	Min Time	Max Time	Average Time
1 Open SCAR from CPS				
2 Prints SCAR				
3 Renames SCAR				
4 Review SCAR details				
5 Initiate a call for service				
6 Completes closure of the SCAR				
7 Rename SCAR				
8 Dispatch/assign call to duty				
9 Officer receives & acknowledges call				
10 Interview with child				
11 Interview with parents, et.al				
12 Collect evidence (pictures, etc.)				
13 Book evidence at station				
14 Write child abuse incident report				
15 Supervisor review & approval				
16 Enter report info into agency system				
17 Make copies, route to others, file report				
18 Rename SCAR as completed				
19 Complete Criminal History check				
20 Collaborates with DPS, others				
21 D. receives/reviews report & evid.				
22 D. interviews child				
23 D. interviews witnesses & suspect				
24 D. Write report				
25 Supv. Reviews and approves report				
26 Complete tracking, filing, etc.				
27 Complete/submit CACI to DOJ				
28 Complete/submit CACI to suspect				
29 Complete/send Reporter form				
30 _____				
31 _____				

Level 4 – Child Abuse Investigation Finds Severe Injuries (Physical, Mental and/or Sexual) – department receives SCAR from CPS and a deputy sheriff or police officer responds and there is an apparent criminal incident of severe physical, mental and/or sexual abuse.

Steps or Activities: (Enter added tasks)	Class Code	Min Time	Max Time	Average Time
1 Open SCAR from CPS				
2 Prints SCAR				
3 Renames SCAR				
4 Review SCAR details				
5 Initiate a call for service				
6 Rename SCAR				
7 Dispatch/assign call to duty				
8 Officer receives & acknowledges call				
9 Interview with child				
10 Interview with parents, et.al				
11 Collect evidence (pictures, etc.)				
12 Victim exam at hospital				
13 Book evidence at station				
14 Write child abuse incident report				
15 Supervisor review & approval				
16 Enter report info into agency system				
17 Make copies, route to others, file repor				
18 Rename SCAR as completed				
19 Complete Criminal History check				
20 Collaborates with DPS, others				
21 D. receives/reviews report & evid.				
22 D. interviews child				
23 D. interviews witnesses & suspect				
24 Consultation with medical experts'				
25 Polygraph				
26 DNA retrieval				
27 Review school records				
28 Complete crime scene work				
29 Multi-disciplinary case review				
30 D. Write report				
31 Supv. Reviews and approves report				

32 Prepare/serve search warrant				
33 Provide for protective custody???				
34 Complete tracking, filing, etc.				
35 Complete/submit CACI to DOJ				
36 Complete/submit CACI to suspect				
37 Complete/send Reporter form				
38				
39				
40				

COMMENTS: Please feel free to add any comments or suggestions concerning you department's process, participants and anything to assist in survey process

CHILD ABUSE AND NEGLECT REPORTING ACT

TASK FORCE REPORT

2004

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I.

INTRODUCTION

Children by the tens of thousands are injured physically, emotionally or mentally in California every year. That is common knowledge.

For forty years California has been committed through its Child Abuse and Neglect Reporting Act (“CANRA” or “Act”) to identifying children who have been injured other than by accidental incidents or disease and who are at continuing risk of being deliberately or recklessly re-injured by persons who have custody of or supervisory control over them.

The California Department of Social Services (DSS) directs the efforts of county child welfare agencies (CWA) and child protective services (CPS) to investigate the circumstances of such injuries, identify the causes and provide remedial and preventive services to the children and, where appropriate, to their caretakers.

Local law enforcement assists CWA and CPS with investigations of serious child abuse and neglect to determine whether criminal offenses have occurred that necessitate intervention by the criminal justice system. Police and sheriff departments are the lead investigators for injuries to children which take place outside of their family or other living environment.

Assisting these agencies and law enforcement are categories of professionals required to report serious child abuse and neglect. Together, they make up California’s child abuse reporting system.

This report by the CANRA Task Force is presented in several parts. Following the Introduction, the Overview discusses the work of the Task Force. The Reports section lists the findings and recommendations of the Task Force Subcommittees endorsed by the Task Force. These are presented in conceptual discussions as opposed to proposed statutory language.¹ A section for General Recommendations endorsed by the Task Force contains both recommendations and points that require additional study. The Proposed Statutory Amendment section presents statutory language for amendments to CANRA, which were unanimously endorsed by the Task Force.² The section on the Organizational Placement of the Child Abuse Central Index discusses the respective positions of the California Department of Justice (DOJ) and DSS regarding the appropriate agency to operate the non-investigative mission of the Child Abuse Central Index. Lastly, the Minority Report and accompanying replies by the Task

¹The Task Force agreed that proposed statutory language would not be submitted, with the exception of those set forth in the proposed statutory amendments section.

²These Proposed Statutory Amendments have been concurrently submitted to the Legislature in SB 1313 (Kuehl) for adoption.

Force members provide serious discussion to further educate on issues as to which the Task Force could not arrive at a consensus.

Creation of the CANRA Task Force

Calls for legislative reform, as well as litigation, were the impetus for the creation of the CANRA Task Force. Senate Bill 1312 (Peace) of the 2001-2002 legislative session would have required that, before submitting a report to the Child Abuse Central Index (“CACI” or “Index”), the investigating agency notify the known or suspected child abuser that he or she is to be reported to the Index, and the individual would then have had the right to a hearing regarding the proposed entry of the report into the Index. Senate Bill 1312 would have also provided persons who were reported to the Index prior to the bill’s enactment with the right to a hearing to remove their name from the Index. And for those individuals who were reported to the Index before January 1, 1998, Senate Bill 1312 would have required that DOJ review listings in the Index and send notice to those individuals advising them of their right to a hearing. Finally, Senate Bill 1312 would have created a task force for the purpose of reviewing CANRA. Senate Bill 1312 ultimately failed passage in the Assembly Appropriations Committee.

Assembly Bill 2442 (Keeley) of the 2001-2002 legislative session (*Stats.* 2002, ch. 1064.) created the Child Abuse and Neglect Reporting Act Task Force for the purpose of reviewing CANRA and addressing: (1) the value of the Index in protecting children; and (2) changes needed with respect to CANRA, including the operation of the Index. (Pen. Code, § 11174.4.) The Task Force operated with the awareness that there have been significant calls for legislative reform and legal challenges to the operation of the Index.³

Overview of CANRA and the Child Abuse Central Index

The Index, administered by DOJ, was created by the Legislature in 1965 as a centralized system for collecting reports of suspected child abuse. CANRA is the statutory authority for the Index. (See Pen. Code, § 11164 et seq.) CANRA is “premised on the belief that reporting suspected child abuse is fundamental to protecting children.” (*Strecks v. Young* (1995) 38 Cal.App.4th 365, 371.) The legislative purposes behind the Act are: (1) to identify child abuse victims for early intervention and protection by public authorities as early as possible (see *James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 253); and (2) to provide “an important source of information assisting local law enforcement officials and child protective agencies in identifying, apprehending and prosecuting child abusers.” (*Stats.* 1984, ch. 1613, §5, p. 5728.) Simply stated, “[t]he purpose of the Act is to protect children from abuse. [Pen. Code], § 11164(b). The statutory procedures for reporting are essential to the accomplishing of this purpose.” (*Searcy v. Auerbach* (9th Cir.1992) 980 F.2d 609, 611.)

Under the predecessor statute to CANRA, only physicians, surgeons, and dentists were required to report instances of known or suspected child abuse to law enforcement officials.

³The Task Force roster is found at the end of this report.

(Stats. 1965, ch. 1171.) Since then, the categories of mandated reporters have expanded. Today, the Act requires various categories of persons – including, but not limited to, teachers, school administrators, child care providers, peace officers, medical practitioners, therapists, commercial film developers, and clergy members – to report incidents of known or suspected child abuse or neglect. (See Pen. Code, § 11165.7.)⁴

Just as the definition of “mandated reporter” has expanded over time, so has the type of abuse that has to be reported. Under the predecessor statute to CANRA, not only were physicians, surgeons, and dentists the only mandated reporters of child abuse; the only type of abuse that had to be reported was physical abuse. In 1975, however, the definition of reportable abuse was expanded to include sexual abuse. Today, the Act defines the term “child abuse or neglect” as having several components: (1) physical abuse (defined as the infliction of physical injury by other than accidental means); (2) sexual abuse (including both sexual assault and sexual exploitation); (3) neglect (either general or severe); (4) willful cruelty or unjustifiable punishment; and, (5) unlawful corporal punishment or injury. (Pen. Code, §§ 11165.1, 11165.2, 11165.3, 11165.4, 11165.6.)

With expansion of the list of mandated reporters, the concomitant duty to report has also been extended. The duty to report is triggered when, based on knowledge or observation, the mandated reporter knows or reasonably suspects child abuse or neglect. (See Pen. Code, § 11166, subd. (a).) The mandated reporter must immediately or as soon as practicably possible make a phone report of known or suspected child abuse or neglect to any police or sheriff’s department, county probation department (if designated by the county to receive such reports), or county welfare department. (Pen. Code, §§ 11165.9, 11166, subd. (a).)⁵ He or she must follow that up with a written report within 36 hours. (Pen. Code, § 11166, subd. (a).)⁶ A report by a mandated reporter is confidential, and a mandated reporter is immune from both criminal and civil liability for any report required or authorized under CANRA. (Pen. Code, §§ 11167, subd. (d), 11167.5, 11172, subd. (a).)⁷ If a mandated reporter fails to make a report, however, he or she is subject to misdemeanor penalties. (Pen. Code, § 11166, subd. (b).)

⁴For a broader discussion of CANRA see Appendix A, “General Information,” which also presents several issues that were presented to the Task Force.

⁵The agency that receives the report is required to cross-report to the other designated agencies, as well as to the district attorney’s office. (Pen. Code, § 11166, subds. (h), (i).) Also, when an agency receives a report of abuse at a licensed child care facility, it is required to notify the appropriate licensing agency. (Pen. Code, §§ 11166, subd. (a), 11166.2, 11166.3, subd. (b).)

⁶A copy of the form used for this purpose is found in Appendix A.

⁷Discretionary reporters have only limited immunity. A discretionary reporter is immune from liability unless it can be proven that he or she knowingly made a false report or that he or she made a false report with reckless disregard of its truth or falsity. (Pen. Code, § 11172, subd. (a).)

With the exception of school districts, training for mandated reporters is not required under the Act. (Pen. Code, § 11165.7, subds. (c), (d).) However, the absence of training does not excuse a mandated reporter from the duties imposed under CANRA. (Pen. Code, § 11165.7, subd. (e).)

Investigations play an important role in the operation of the Index. An agency may not forward a report to the Index unless it has conducted an active investigation. (Pen. Code, § 11169, subd. (a).)⁸ Key to whether an investigation will lead to a report being forwarded to the Index is the determination of whether abuse occurred.⁹ In order to be submitted to the Index, a report must be “substantiated” or “inconclusive.” (See Pen. Code, §§ 11169, subd. (a), 11170, subd. (a)(1).) A “substantiated” report means one that the agency determines is based on some credible evidence of abuse; an “inconclusive” report is one that is not unfounded but in which the findings are inconclusive and there exists insufficient evidence to determine that child abuse or neglect occurred. (Pen. Code, § 11165.12, subds. (b), (c).)¹⁰ After conducting an active investigation and creating an investigative report, the investigating agency must submit to DOJ a one-page summary report on every case of abuse or severe neglect which is determined not to be “unfounded” (i.e., to be false or inherently improbable, to involve an accidental injury, or not to constitute child abuse). (Pen. Code, §§ 11165.12, subd. (a), 11169, subd. (a), 11170, subd. (a)(1).)¹¹ Since January 1, 1998, with the enactment of Senate Bill 644, the investigating agency must provide notice to the subject upon submitting a report to the Index. (Pen. Code, § 11169, subd. (b).) Similarly, after the investigation is completed or the matter reaches a final disposition, the investigating agency is obligated to inform the mandated reporter of the results of the investigation and action the agency is taking with regards to the child or family. (Pen. Code, § 11170, subd. (b)(2).)

⁸An “active investigation” requires assessing the nature and seriousness of the abuse, conducting interviews of the victim, suspect and witnesses, and gathering and preserving evidence. (See Cal. Code Regs, tit. 11, § 901, subd. (a).) The “active investigation” requirement was mandated under Senate Bill 644 (Polanco) (*Stats.* 1997, ch. 842).

⁹Much of the information concerning the welfare of the child also becomes part of the statewide Child Welfare Services/Case Management System (CWS/CMS) database maintained by DSS pursuant to Welfare and Institutions Code section 16501.5

¹⁰Originally the “inconclusive” category of report was entitled “unsubstantiated.” However, with the enactment of Senate Bill 644, the name was formally changed to “inconclusive.”

In many instances the Index contains reports where officials did not have probable cause for an arrest. But an entry in the Index is not a determination that the person has in fact committed abuse. (See *People ex rel Eichenberger v. Stockton Pregnancy Control Medical Clinic* (1988) 203 Cal.App.3d 225, 247 (conc. opn. by Puglia, J.) [reporting is not concerned with adjudicating guilt or fixing criminal responsibility].)

¹¹A copy of the form used for this purpose is found in Appendix A.

DOJ acts only as a “repository” indexing the underlying reports, with the submitting agency responsible for the accuracy of its investigative report. (Pen. Code, § 11170, subd. (a)(2).) The Index may, accordingly, be analogized to the card catalog in a library: the Index does not contain the underlying investigative reports; it is only a pointer referring investigators to them.¹² The submitting agencies are charged with retaining the underlying investigative reports for at least the same period of time that DOJ is required to maintain the information from the report in the Index. DOJ is required to keep substantiated reports indefinitely and inconclusive reports for 10 years. (See Pen. Code, §§ 11169, subd. (c), 11170, subd. (a)(3).)

Access to the Index was initially limited to official investigations of open child abuse cases. In 1986, though, access to the Index was expanded to allow access for non-investigative functions, i.e., background checks – screening those applying for licensure by DSS as foster parents, day care operators, etc., and those seeking adoption or placement of children.¹³ The right of access was subsequently further expanded to include county agencies that have contracted with the State for the performance of licensing duties; county child death review teams; investigative agencies, probation officers, and court investigators involved in the placement of children and adoption agencies. (Pen. Code, §§ 11170, subds. (b)(3), (b)(4), (b)(5), (c), 11170.5.)

The Index, however, is still used only as a pointer to the underlying investigative report maintained by the submitting agency. Thus, Penal Code section 11170, subdivision (b)(6)(A), provides that, with the exception of emergency placements and adoptions (See Pen. Code, §§ 11170, subd. (b)(6)(B), 11170.5), agencies querying the Index “are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.” (See also Cal. Code Regs., tit. 11, § 902.) Accordingly, child protective agencies and licensing authorities are independently authorized to obtain all reports referenced in the Index directly from the submitting agency. (Pen. Code, §§ 11167, 11167.5, subd. (b)(2).)¹⁴

¹²DOJ is required to notify a reporting agency of any prior reports involving the individual(s) currently under investigation. (Pen. Code, § 11170, subd. (b)(1).) This “notice-back” function is intended to assist the agency’s investigation of suspected abuse.

¹³ The distinction between child abuse investigations and non-investigative functions is important. With the expansion of the Index into non-investigative areas, the operation of the Index has become the subject of litigation, discussed *infra*. This has also led to what is described as the current “dual mission” of the Index, serving the needs of law enforcement and other child protective agencies for investigative purposes and the needs of DSS for background checks.

¹⁴Moreover, persons identified as suspects in the Index can request that DSS clear them for entry in Trustline. Trustline is administered under the supervision of DSS pursuant to Health and Safety Code section 1596.60 et seq. A person listed in Trustline, which is a public record accessible by anyone, is cleared to be a “license exempt child care provider.” This clearance can be obtained notwithstanding a listing in the Index if DSS determines that the indexed

Listing on the Index is not a *per se* bar, for example, for licensure of or employment in a child care center. Currently, with the exception of emergency placements and adoptions, information obtained from the Index may not be relied upon to make decisions regarding a person identified in an indexed report. Instead, decisions regarding individuals identified in indexed reports must be based on independent evaluations of the information in the reports held by the submitting agency, as relevant to the purpose of the current investigation, and on any additional investigation that may be necessary. (Pen. Code, § 11170, subd. (b)(6)(A).) Persons adversely affected by such decisions are afforded opportunities for redress in the legal system.¹⁵

Although DOJ is charged with administering the Index, DOJ plays an indirect role in controlling the names that are placed on or removed from the Index. Nonetheless, DOJ is authorized to delete reports under specific circumstances. DOJ must continually update the Index to assure that it does not contain unfounded reports. (Pen. Code, § 11170, subd. (a).) If an agency determines that a previously-filed report is unfounded, it must notify DOJ so that the report can be removed from the Index. (Pen. Code, § 11169, subd. (a).) This imposes the obligation on submitting agencies to follow up with DOJ and identify unfounded reports so that DOJ may delete the information from the Index.¹⁶ Otherwise, information from an inconclusive report is kept for a 10-year period and then deleted unless a subsequent report concerning the same suspected child abuser is received in the interim. (Pen. Code, § 11170, subd. (a)(3).)

investigative reports do not substantiate child abuse or that the person identified as a suspect in the reports does not “pose a threat to the health and safety of any person who is or may become a client.” (Health & Saf. Code, § 1596.607, subd. (a)(3).) Any person denied entry into Trustline may appeal the denial and the appeal will be heard by an administrative hearing officer. (Health & Saf. Code, § 1596.607, subd. (b).)

¹⁵There are statutory schemes in some instances that allow for legal review. For example, if, following an independent evaluation of the underlying investigative file, a county welfare agency decides to remove a child from a parent’s home, Welfare and Institutions Code sections 300 through 399 protects the parent by affording a hearing. Similarly, DSS is required to conduct an independent investigation to substantiate any allegations of child abuse or neglect before making a decision based on information obtained from the Index. (See Health & Saf. Code, §§ 1522.1, 1596.877.) DSS must also provide a hearing for the denial of a license or employment under the Administrative Procedures Act, governed by Government Code section 11500 et seq. (See Health & Saf. Code, §§ 1526, 1596.607, subd. (b), 1596.879.) Finally, the recommendation by DSS that an adoption be denied allows the affected party to seek redress in superior court.

¹⁶Civil Code Section 1798.18 of the Information Practices Act provides a similar obligation on submitting agencies to maintain only current records. This section provides: “Each agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness. Such standard need not be met except when such records are used to make any determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.”

Information from a substantiated report is kept indefinitely.

Since the enactment of Senate Bill 644 in 1998, anyone may inquire whether he or she is listed in the Index. (Pen. Code, § 11170, subd. (e).)¹⁷ If he or she is in fact listed in the Index, DOJ will provide him or her with the name of the submitting agency and report number. The requesting person is responsible for obtaining the investigative report from the submitting agency. (Pen. Code, §§ 11167.5, subd. (b)(11), 11170, subd. (e).) If a person is listed only as a victim of abuse he or she may ask to be deleted from the Index upon reaching the age of 18. (Pen. Code, § 11170, subd. (f).)

When an Index inquiry is received from a private citizen or from an agency for non-investigative functions (with the exception of emergency placements), DOJ will contact the agency that submitted the report to confirm that the investigative report still exists, that the report has not subsequently been determined to be unfounded, and that the report meets the current legal requirements for retention and dissemination. If the report does not comply with these standards for retention and dissemination, DOJ will delete the record from the Index after notifying the private citizen. (Cal. Code Regs., tit. 11, § 908, subd. (c).) If the request was made by an agency for a non-investigative function, DOJ will advise the requesting agency that there was no match and then delete the record from the Index. (Cal. Code Regs., tit. 11, § 908, subd. (b).)

Today, the Index contains approximately 905,000 entries, listing approximately 810,000 suspects and 1,000,000 victims. Per year, DOJ receives approximately 35,000 new reports to be added to the Index and some 10,000 inquiries for investigative purposes and 40,000 inquiries for non-investigative functions.¹⁸

As described above, CANRA has undergone amendments over the years to improve operation of the Index. Moreover, the Index has survived several legal challenges.

¹⁷A private citizen must submit a notarized request to DOJ. (Pen. Code, § 11170, subd. (e).)

¹⁸The 40,000 non-investigative inquiries represent non-livescan inquiries made by way of a faxed request. These are for purposes of emergency child placements, and guardian/conservatorships. The 10,000 investigative and 40,000 non-investigative inquiries represent requests and not the number of names requested to be checked.

DSS is the largest user of the Index. Approximately 240,000 applicant livescan inquiries are submitted by DSS, counties and local agencies annually for purposes of foster care licensing, Trustline and adoptions. About 5 percent of these requests match Index entries.

APPENDIX 16

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Figure II-3

Criminal Child Abuse Investigative Checklist

1. REVIEW AND NOTE AVAILABLE INFORMATION

- ___ How, when, and by whom reported
- ___ CPS report/caseworker and action taken to date
- ___ Police reports
- ___ Medical exam or autopsy/findings/name of doctor
- ___ Witness statements
- ___ Prior reports concerning this child
- ___ Prior reports/complaints/convictions concerning this suspect
- ___ Records check (local, state, F.B.I.) re: suspect
- ___ Need for interpreters

2. CONTACT CHILD

- ___ Note vital statistics: DOB, height, weight, etc.
- ___ Note home address, school/grade attended
- ___ Note any known disabilities
- ___ Note observations of physical appearance
- ___ Note demeanor, emotions displayed
- ___ Take photos of injuries
- ___ Make referrals to counseling and other support services

Child Interview

- ___ Explain your role
- ___ Elicit background information, put child at ease, assess developmental/intellectual level
- ___ Determine whether medical exam has occurred
- ___ Determine child's expectations, fears, desired consequences
- ___ Provide information and let child know how to contact you

Obtain Detailed Description of Alleged Abuse

- ___ Name of suspect and relationship to child (family, friend, stranger, etc.)
- ___ Physical description of suspect
- ___ When alleged abuse occurred
 - ___ Once or more than once
 - ___ How often
 - ___ Child's age at time
 - ___ First incident
 - ___ Most recent incident
 - ___ Time of day/duration
 - ___ Association with other events
 - ___ Recollection of individual incidents
- ___ Location(s) of abuse (state, county, city, building, room, other)
- ___ Any corroborative details: specific descriptions of clothing, furniture or other items, of other people nearby, of TV shows on at time, of child's feelings at time of abuse, etc.

Investigation

- _____ Enticements, bribes, gifts, promises, explanations, threats, intimidation by suspect
- _____ Elements of secrecy
- _____ Suspect's words during abuse
- _____ Whether child has diary/journal
- _____ Whether child has correspondence from suspect
- _____ Whether child gave correspondence or other items to suspect
- _____ Whether other witnesses present
- _____ Where other family members were
- _____ Whether other victims seen/known
- _____ Child's attitude toward suspect then/now—close, loving, hostile, fearful, etc.
- _____ First person child told about abuse and his/her reaction
- _____ If applicable, why child delayed in disclosing
- _____ Others child told and reactions
- _____ Drugs used by suspect or given to child
- _____ Alcohol used by suspect or given to child
- _____ Prior abuse (physical or sexual) of child
 - _____ By this suspect
 - _____ By anyone else

Add for Sexual Abuse

- _____ Clarify child's terms for anatomy
- _____ Note child's exact words describing alleged abuse
- _____ Nature of alleged abuse
 - _____ Oral/vaginal/anal contact—descriptions of positions, movement
 - _____ Fondling/penetration
 - _____ Made to perform sex acts on offender
 - _____ Use of pornography (films, magazines, pictures)
 - _____ Use of foreign objects, sexual devices, contraceptives, lubricants
 - _____ Whether photos taken of child
 - _____ Whether child saw photos of other children
 - _____ Clothes on or off—child and offender
 - _____ Pain, bleeding or discharge
 - _____ Suspect's behavior/words during and after sex acts
 - _____ Whether child saw/felt ejaculation
- _____ Description of any unusual physical characteristics of suspect—tatoos, birthmarks, etc.
- _____ Description of suspect's genitals—pubic hair (color), penis (erect/flaccid, circumcised or not), or any other unusual or unique features
- _____ If suspect ejaculated, where—in child's mouth/vagina/rectum, elsewhere on child's body, on bedding/carpet/clothing, etc.
- _____ Did child wipe self or suspect clean it up—if so, with what and where is it?

Add for Physical Abuse

- _____ Any weapons used: description and location
- _____ Child's explanation for specific injuries
- _____ Reason (if known) for suspect's use of force—punishment, anger, etc.
- _____ Whether suspect violent toward others
- _____ Whether child has had prior medical problems or treatment and if so, when and what

3. MEDICAL EXAMINATION OF CHILD

- ___ Find out if exam already done; if so,
 - ___ When
 - ___ By whom conducted
 - ___ Who sought medical attention for child
- ___ If not already done, arrange as soon as possible
- ___ Obtain consent to acquire medical reports; arrange for legible copies
- ___ Interview doctor and other medical personnel and determine how to contact in future
- ___ Document any statements made by child
- ___ Note any special procedures used
 - ___ Colposcope
 - ___ Photos
 - ___ Videocolposcope
 - ___ Toluidine blue dye
 - ___ Wood's Lamp
 - ___ Proctoscopy or anoscopy
 - ___ CT scan
 - ___ X-rays/skeletal survey
 - ___ Screen for blood disorders/clotting studies
 - ___ Consultation with/referral to other experts
 - ___ Other
 - ___ Collect any physical evidence gathered by doctor
 - ___ Specimens and samples
 - ___ Photos
 - ___ Child's clothing worn during assault
- ___ Arrange for necessary crime lab analysis
 - ___ Presence of sperm, acid phosphatase, P 30
 - ___ Blood/serology analysis
 - ___ Hair comparison
 - ___ Fiber comparison
 - ___ DNA testing
 - ___ Other

Medical Evidence/Observations Consistent with Sexual Abuse

- ___ Evidence of violence anywhere on body
- ___ Bleeding, bruises, abrasions
 - ___ Bitemarks
 - ___ Broken bones
 - ___ Other
- ___ Positive results for presence of semen
 - ___ Fluorescence with Wood's Lamp
 - ___ Motile/nonmotile sperm
 - ___ Positive acid phosphatase or P30
- ___ Pregnancy/Abortion
- ___ Sexually transmitted disease present
 - ___ Tests conducted
 - ___ Sample collection method
 - ___ Body sites tested (anus, vagina, mouth)
 - ___ Gonorrhea

- _____ Syphilis
- _____ Chlamydia trachomatis
- _____ AIDS
- _____ Herpes
- _____ Trichomonas vaginalis
- _____ Venereal warts
- _____ Nonspecific vaginitis
- _____ Pubic lice
- _____ Any vaginal/penile discharge
- _____ Other
- _____ Itching, irritation or trauma of any kind in genital or anal area
- _____ Foreign debris in genital or anal area
- _____ Vaginal area injury/findings
 - _____ Enlarged vaginal opening in prepubertal child
 - _____ Posterior fourchette lacerations
 - _____ Other lacerations/scarring, and location
 - _____ Redness, focal edema or abnormalities (synechiae, changes in vascularity, etc.)
 - _____ Absent or thinned hymenal ring
 - _____ Laxity of pubococcygeus muscle—gaping vaginal opening
- _____ Anal area injury/findings
 - _____ Reflex relaxation of anal sphincter
 - _____ Positive wink reflex
 - _____ Complete or partial loss of sphincter control
 - _____ Lacerations, scarring, erythema
 - _____ Fan-shaped scarring
 - _____ Loss of normal skin folds around anus
 - _____ Thickening of skin and mucous membranes
 - _____ Skin tags
 - _____ Gaping anus with enlargement of surrounding perianal skin

Medical Evidence/Observations Consistent with Physical Abuse

- _____ Doctor's opinion regarding cause of child's death or injury as nonaccidental
- _____ Delay or failure to seek medical treatment by child's parent(s)/caretaker(s)
- _____ History given inconsistent with severity, type or location of injury
- _____ History inconsistent with child's developmental level/ability to injure self
- _____ Different explanations of injury from different family members
- _____ Child fearful, unwilling to explain cause of injury
- _____ Change in details during history-taking or given to different people
- _____ Current physical injury accompanied by signs of multiple prior injuries or neglect, e.g., malnutrition, lack of regular medical care, etc.
- _____ Parenting disorders apparent—e.g., alcoholism, drug abuse, psychotic behavior, etc.
- _____ Parent/caretaker irritated, evasive, vague, reluctant to give information
- _____ Doctor's opinion that child's injuries are consistent with battered child syndrome

Injuries Suspicious for Physical Abuse

SOFT TISSUE INJURIES

Bruises, Abrasions, Welts and Lacerations

- _____ In location other than bony prominences, such as buttocks, lower back, genitals, inner thighs, cheeks, ear lobes, mouth, neck, under arms, frenulum
- _____ Multiple bruises at different stages of healing over large area of body, especially if deep
- _____ Adult bitemarks
- _____ Wrap-around, tethering or binding injuries
 - _____ Neck, ankle or wrist circumferential injuries; rope burns
 - _____ Injuries due to choking or gagging
 - _____ Trunk encirclement bruising
- _____ Patterns/imprints/lacerations suggesting inflicted injury
 - _____ Grab, pinch, squeeze or slap marks
 - _____ Strap or belt marks
 - _____ Looped cord marks
 - _____ Imprints or lacerations from other objects—tattooing, punctures, whips, sticks, belt buckles, rings, spoons, hairbrush, coat hangers, knives, etc.

INTERNAL OR ABDOMINAL INJURIES

- _____ History or severity of injury indicating child was pummelled, thrown or swung against wall or other object, kicked, or hit with blunt, concentrated force
- _____ Lack of history indicating auto accident or fall from high place
- _____ Internal/organ damage
 - _____ Ruptured or perforated liver
 - _____ Injuries to spleen
 - _____ Injuries to intestines
 - _____ Injuries to kidneys
 - _____ Injuries to bladder
 - _____ Pancreatic injury
 - _____ Injuries to other internal organs
- _____ External symptoms
 - _____ Nausea, vomiting
 - _____ Constipation
 - _____ Shock
 - _____ Blood in urine
 - _____ Swelling, pain, tenderness

HEAD INJURIES

- _____ Multiple bruises/lumps on scalp
- _____ Hemorrhaging beneath scalp or hair missing due to hair pulling
- _____ Subdural hematomas (never spontaneous)
- _____ Suspect caused injuries by violent shaking if
 - _____ Bone chips at cervical vertebrae
 - _____ Compression fractures to ribs
 - _____ Damage to neck muscles and ligaments—child unable to turn head to side or up and down

Investigation

- _____ Spinal cord damage
- _____ No skull fracture or external bruising or swelling
- _____ Whiplash or shaken baby/impact syndrome diagnosis
- _____ Suspect caused injuries by abusive blunt force trauma if
 - _____ Skull fracture
 - _____ Scalp swelling and apparent bruising
 - _____ Parent/caretaker denies recent trauma, fall or other injury sufficient to account for injury or claims accidental force such as fall from couch, bed or crib which is insufficient to cause such injury
- _____ Subarachnoid or other intracranial hemorrhages with no sufficient "accidental" explanation
- _____ Skull fractures without history of significant "accidental" force
- _____ Injuries to eyes without sufficient accidental or other explanation
 - _____ Retinal hemorrhaging, especially if other evidence of nonaccidental head trauma present
 - _____ Black eyes
 - _____ Detached retinas
 - _____ Petechia (small spots of blood from broken capillaries) or other bleeding in eye
 - _____ Cataracts
 - _____ Sudden loss of visual acuity
 - _____ Pupils fixed, dilated or unresponsive to light
 - _____ Eyes not tracking or following motion
- _____ Ear injuries without appropriate explanation
 - _____ Sudden hearing loss
 - _____ "Cauliflower" ear
 - _____ Bruising to ear or surrounding area
 - _____ Petechia in ear
 - _____ Blood in ear canal
- _____ Injuries to nose without appropriate explanation
 - _____ Deviated septum
 - _____ Fresh or clotted blood in nostrils
 - _____ Bridge of nose bent or swollen
- _____ Injuries to mouth without appropriate explanation
 - _____ Chipped, missing or loose teeth caused by blow to mouth
 - _____ Bruising in corners and lacerations of frenulum, of upper and lower lip, and of tongue—indicative of exterior gag
 - _____ Petechia inside nostrils, around nose, or near corners of mouth—could indicate manual suffocation if child has stopped breathing

SKELETAL INJURIES

- _____ Multiple fractures at different stages of healing
- _____ Repeated fractures to same bone
- _____ Spiral fractures (usually femur, tibia, forearm or humerus)
- _____ Rib fractures, especially in children less than three
- _____ Bone chips in bones connecting at elbow or knee, caused by jerking and shaking (avulsion of the metaphyseal tips)
- _____ Growth plate separations caused by shaking—"bucket handle" and "corner" fractures
- _____ Injuries to bone—bleeding and thickening/calcification—which is repeatedly hit but not broken (sub-periosteal proliferation—apparent on x-ray)
- _____ Fractures to bones not usually accidentally broken, such as scapula and sternum

INVESTIGATION AND PROSECUTION OF CHILD ABUSE

INFLECTED BURNS

- ___ Child burned on unusual part of body—palms, soles, genitals, etc.
- ___ Parent/caretaker delays in seeking medical help
- ___ Multiple burns of different ages and different burn patterns
- ___ Symmetrical, patterned burn with sharp margins—no indication of child trying to get away (child held down or hot object deliberately applied)
- ___ Hot water burns
 - ___ Immersion/dipping burn—oval shape, usually buttocks and genital area
 - ___ Doughnut-shaped burn—surrounding buttocks (indicates child forcibly held down)
 - ___ Glove or stocking burn—immersion of hand or foot
 - ___ Even immersion lines, lack of splash burns (child prevented from thrashing around, trying to get out)
- ___ Contact burns
 - ___ Cigarette, cigar, match tip, pilot light flame burns—usually deep circular burns
 - ___ Imprint of object responsible for burn with sharp margins—usually deep and uniform burn:
 - ___ Stove burner (star, circular, coil shapes)
 - ___ Heating grate, radiator
 - ___ Iron
 - ___ Curling iron
 - ___ Heated knife or hanger
 - ___ Other

4. CONTACT OTHER WITNESSES

- ___ Determine *all* people with relevant information about child or suspect and obtain statements (complainant, child's parents/caretakers, family members, friends, emergency medical technicians (EMTs), ambulance attendants, emergency room doctors, medical examiner, co-workers, teachers, CPS personnel, neighbors, therapists, etc.)
- ___ Note identifying information for each witness: DOB, address, phone, employment, employment phone, relationship to child and/or suspect, marital status, etc.
- ___ Check for prior criminal record of witness
- ___ Note witness' demeanor and attitude toward child and/or suspect, and reaction to allegations
- ___ Determine degree of familiarity with child and/or suspect
- ___ Determine whether they witnessed any unusual or inappropriate behavior/contact between suspect and child or other children
- ___ Determine whether they know of or suspect any other children who were victimized or at risk
- ___ Determine whether they know of additional potential witnesses
- ___ Determine whether they can verify/refute *any* facts supplied by child or suspect
- ___ Awareness of any motives of child or others to falsely accuse suspect
- ___ Observation of any physical/medical symptoms in child (see preceding list)
- ___ Determine whether suspect or caretaker gave explanation to witness of child's injury
- ___ Obtain written, signed statements of witnesses (or recorded, if appropriate)
- ___ Observation or knowledge of *any* unusual behavior/behavior changes in child before or after disclosure; some possibilities include:

Behavioral Extremes

- ___ Constant withdrawal, depression, suicide gestures/attempts or self-destructive behavior
- ___ Overly compliant or passive
- ___ Overly eager to please
- ___ Afraid to talk or answer questions in parent's/suspect's presence
- ___ Avoiding suspect or refusal to be with suspect
- ___ Fearful of a place—day-care, school, baby-sitter's, suspect's room, etc.
- ___ Fear of all males, all females or all adults
- ___ Wary of physical contact
- ___ Unusual self-consciousness—e.g., unwilling to change clothes for gym class or to participate in recreational activities
- ___ Constant fatigue, listlessness or falling asleep in class
- ___ Excessive self-control; never cries or exhibits curiosity
- ___ Frequent unexplained crying
- ___ Apprehension when other children cry
- ___ Poor peer relationships or deterioration in existing friendships
- ___ Inability to concentrate
- ___ Unusual craving for physical affection
- ___ Unexplained or extreme aggressiveness, hostility, physical violence
- ___ Turning against a parent, relative, friend, etc.
- ___ Delinquency, including theft, assaultive behavior, etc.
- ___ Alcohol or drug use/abuse
- ___ Running away
- ___ Frequent absences/truancy from school
- ___ Early arrival, late departure and very few absences from school
- ___ Sudden increase or loss in appetite
- ___ Change in school performance or study habits
- ___ Compulsion about cleanliness—wanting to wash or feeling dirty all the time

Psychosomatic Symptoms

- ___ Headaches
- ___ Stomachaches
- ___ Rashes
- ___ Stuttering

Regressive Behavior

- ___ Reverting to accidents/bed-wetting
- ___ Baby talk
- ___ Excessive clinging
- ___ Thumb sucking
- ___ Carrying blanket
- ___ Wanting to nurse
- ___ Otherwise acting younger than age

Sleep Disturbances

- ___ Bad dreams
- ___ Refusal/reluctance to sleep
- ___ Excessive sleeping
- ___ Sleepwalking

- _____ Sudden fear of darkness
- _____ Other sleep pattern changes

Unusual Sexual Behavior or Knowledge

- _____ Acting out sexually with toys, other children
- _____ Excessive masturbation
- _____ French kissing
- _____ Sexually provocative talk
- _____ Seductive behavior toward adults
- _____ Preoccupation with sexual organs of self or others
- _____ Sexually explicit drawings
- _____ Sexual knowledge beyond norm for age

Other Behaviors

- _____ Dressed inappropriately for weather—e.g., always in long sleeves, etc.
- _____ Enuresis/encopresis
- _____ Pseudo-mature behavior
- _____ Extreme hunger
- _____ Sudden weight loss or gain
- _____ Personality disorders

5. INTERVIEW WITNESSES TO WHOM CHILD MADE STATEMENTS

- _____ Cover all applicable areas in 4.
- _____ Determine exact circumstances of child's disclosure
 - _____ When and where statements made
 - _____ Who else present
 - _____ Words used by child
 - _____ Details provided by child
 - _____ Incident precipitating disclosure—e.g., spontaneous disclosure, child responding to questions, etc.
 - _____ Child's demeanor/emotional state
 - _____ Child's attitude toward suspect
 - _____ Child's expressed concerns/fears
 - _____ Witness' reaction to child

6. INTERVIEW COMPLAINANTS (first reporters, if other than child)

- _____ Cover all applicable areas in 4. and 5.
- _____ Determine what caused them to report
 - _____ Child's disclosure, *or*
 - _____ Suspicions based on other factors without disclosure from child
- _____ Assess potential motives of complainants

7. INTERVIEW CHILD'S PARENT(S)/CARETAKER(S)

- _____ Cover all applicable areas in 4., 5. and 6.
- _____ Determine child's medical and mental health history
 - _____ Obtain names of doctor(s)/therapist(s)
 - _____ Obtain consent to receive relevant medical records

Investigation

- _____ Prior abuse of child—when, where, who, action taken, results
- _____ Prior accusations of abuse by child—when, where, who, action taken, results
- _____ Child's general personality/functioning—school performance, hobbies, friends, etc.
- _____ Child's normal schedule/routine
- _____ Verification of timing/events related by child
- _____ Suspect's access to child (past and present)
- _____ Ongoing difficulties in family (e.g., divorce, custody or visitation disputes, arguments, etc.) and child's awareness of/reaction to them
- _____ Determine whether family is supportive of child
- _____ Obtain signed medical release for child's medical records

For Physical Abuse

- _____ When injury/sickness of child first noticed and what noticed
- _____ What they know or suspect about cause
- _____ Where child was/who with child before injury/sickness became apparent (usually cover as much as possible up to five days before)
- _____ Child's apparent health and activity for same period before child became ill/development of symptoms noticed
- _____ Time and contents of child's last meal
- _____ Child's sleep activity prior to injury
- _____ Prior illnesses or injuries of child since birth
- _____ Prior medical treatment/hospitalization of child, name of provider(s), name of person who took child for treatment, need for treatment and cause of injuries
- _____ Suspect's responsibility, if any, for discipline of child; normal methods used
- _____ Action taken when noticed injury/sickness
- _____ Health of other children in family
- _____ Name of family doctor or child's pediatrician
- _____ Child's school attendance, names of schools and teachers
- _____ Recent behavioral changes, suspect's explanations for change, events that preceded, suspect's feelings about the change
- _____ If no explanation, periods when child was unsupervised or with others
- _____ Child's developmental level (i.e., child crawling, walking, etc.)
- _____ Any problems with toilet training
- _____ Suspect's awareness of child's medical problems/disabilities
- _____ Parenting or child care classes/instruction received by suspect

For Sexual Abuse

- _____ Determine child's awareness of/exposure to sexual matters
- _____ TV, movies, videos, magazines, etc.
- _____ Observation of adults
- _____ Talking to others—sex education in school, friends, personal safety curriculum
- _____ Determine sleeping arrangements (intrafamilial abuse)
- _____ Determine who bathed child

8. INTERVIEW OTHER FAMILY MEMBERS OF CHILD

- _____ Cover all applicable areas in 4, 5, 6 and 7.
- _____ Determine whether they saw/heard any direct or indirect evidence of abuse
- _____ Determine if they were ever abused

INVESTIGATION AND PROSECUTION OF CHILD ABUSE

9. INTERVIEW SUSPECT'S SPOUSE, SIGNIFICANT OTHER OR OTHERS IN FAMILY/HOUSEHOLD

- _____ Cover all applicable areas in 4, 5, 6, 7 and 8.
- _____ Determine statements made by suspect
- _____ Suspect's reaction to allegation or explanation for it
- _____ Unusual behavior of suspect before or after allegation
- _____ Suspect's opportunity to abuse child—time with child, alone or otherwise
- _____ Relationship known/observed between child and suspect
- _____ Whether suspect owns/owned/possessed items, clothes, etc., described by child
- _____ Other children in contact with suspect
- _____ Prior arrests, accusations, convictions of suspect
- _____ Suspect's violence toward others
- _____ Suspect's employment—past and present
- _____ Suspect's residence—past and present
- _____ Prior marriages of suspect
- _____ All children/stepchildren of suspect
- _____ Suspect's physical and mental health
 - _____ Prior illness/infections/treatment
 - _____ Alcohol or drug abuse
 - _____ Names of doctors/therapists seen
- _____ Description of witness' relationship with suspect
- _____ Description of witness' background—marital, employment, etc.
- _____ Whether suspect (or witness) keeps diary, journal, calendar, computer records, address book, etc.
- _____ Whether suspect has another residence, post office box, storage area, etc.
- _____ Unusual hobbies or interests of suspect

For Sexual Abuse

- _____ Sleeping arrangements in home
- _____ Responsibilities for children's bathing and discipline in home
- _____ Distinctive anatomical features (if any) of suspect—e.g., scars, tatoos, birth-marks, etc.
- _____ Suspect's use (if any) of pornography, sexual aids or implements, birth control
- _____ Presence of sexually transmitted disease in suspect or witness
- _____ Strange/unusual/distinctive sexual practices or preferences of suspect
- _____ Knowledge of prior accusations by other children against suspect
- _____ Knowledge of prior convictions
- _____ Knowledge of suspect's history, prior addresses, prior contact with children

For Physical Abuse

- _____ Suspect's and others' responsibility for child's discipline
 - _____ Usual methods/frequency
 - _____ Amount of force
 - _____ Use of weapons/implements
 - _____ Loss of control
- _____ Any expressions of frustration, disappointment or anger with child by suspect
- _____ Suspect's access to weapons/implements consistent with child's injuries
- _____ Witness' knowledge of suspect's explanations for child's injuries

10. INTERVIEW SUSPECT

- ___ Advise of *Miranda* rights when appropriate
- ___ Stress interested only in hearing and determining the truth: be sympathetic
- ___ Obtain background, biographical information
 - ___ DOB, Social Security Number
 - ___ Vital statistics: height, weight, etc.
 - ___ Past and present residences
 - ___ Past and present employment
 - ___ Marital status/prior marriages
 - ___ Number of children and their names, locations and ages
 - ___ Mailing address(es), P.O. box(es)
 - ___ Neighborhood/community organizations or affiliations
 - ___ Hobbies and interests
 - ___ Regular doctor
 - ___ Magazine subscriptions, especially if sexually-oriented
- ___ Suspect's descriptions of time spent alone with child
- ___ Suspect's schedule and routine—e.g., work and leisure time, vacation time, etc.
- ___ Note suspect's demeanor and any changes during interview—e.g., angry, uncomfortable, vague, evasive, amused, unconcerned, etc.
- ___ Any indication of psychosis, mental health problems, alcohol or drug dependence, physical or medical problems
- ___ Suspect's familiarity with child and child's routine
 - ___ Acknowledgement/awareness of child's age or any disabilities
 - ___ Acknowledgement of time alone with child
- ___ Suspect's description of nature and quality of his relationship with child
- ___ Suspect's description of child
 - ___ "Problem child"
 - ___ "Special" child
 - ___ Good/bad
 - ___ Obedient/disobedient
 - ___ Smart/dumb
 - ___ Honest/dishonest ("pathological liar")
 - ___ "Bruises easily"
 - ___ "Clumsy"
 - ___ "Always/never in trouble"
 - ___ Unrealistic expectations of child
 - ___ Complaints about minor, irrelevant or unrelated problems with child
 - ___ Other
- ___ Suspect's description of ways of dealing with problems with child
- ___ Suspect's description of relationship with spouse, complainant, other important witnesses
- ___ Types and frequency of sexual activity with spouse or peers
- ___ Frequency of masturbation and types of fantasies
- ___ Use of pornography
- ___ Unusual sex practices
- ___ Corroboration of as many details as possible supplied by child
- ___ Suspect's explanation, *in detail*, of reasons for allegation of abuse
 - ___ Child's motive to lie
 - ___ Motive of others to lie
 - ___ Details of "unintended" or "accidental" touching or injury
 - ___ Detailed explanation of how child initiated event

- _____ Detailed explanation of injuries observed on child
- _____ Explanation for why suspect delayed or did not seek medical attention for injured child
- _____ Extent and details of any abusive conduct suspect admits
- _____ Suspect's terminology for body parts
- _____ Request names and locations of anyone who can corroborate information given by suspect
- _____ Request access to any items which could corroborate suspect's claims—e.g., calendar, work records, etc.
- _____ Request names of suspect's friends and co-workers; if someone you are aware of is left out by suspect, find out why
- _____ Ask suspect to verify he has told truth and whether he has anything to add
- _____ In physical abuse/homicide cases, have suspect explain child's injuries
- _____ In Physical abuse/homicide cases, have suspect reenact incident on video

II. SEARCH FOR/SEIZE PHYSICAL EVIDENCE

From Child

- _____ *Photos of injuries/general appearance*
- _____ *Clothing worn at time of assault, especially if torn, bloody, etc.*
- _____ *Bedding, etc. which may contain evidence*
- _____ *Items received from suspect*
- _____ *Calendars, diaries, journals, etc.*
- _____ *Receipts of purchases made by suspect for child*
- _____ *Other items to corroborate details of child's account (see list below)*

From Scene

- _____ Instruments, weapons used by suspect
- _____ Movies, videos, magazines, etc.
- _____ Photograph, diagram, videotape scene; note working condition of TV, video equipment
- _____ Take measurements of areas/items involved, especially in physical abuse cases with claim of accident or self-infliction of injury by child
- _____ In burn cases:
 - _____ Seize/photograph items consistent with pattern of contact burn
 - _____ Photograph all sinks, spigots, bathtubs, stoves, heat sources
 - _____ Check water temperature at water heater and faucets in water burn cases
 - _____ Measure height of tub/sink and note what tub/sink (or other site of burn) is made of
 - _____ Test to determine surface temperature of items used to burn child and check for body residue on them
- _____ In criminal neglect cases:
 - _____ Note/document/photograph/video general appearance of home before "cleaned up" by suspect(s)
 - _____ Determine whether utilities on/working
 - _____ Determine availability/condition of food appropriate for child
 - _____ Determine condition of appliances (stove, refrigerator, etc.) and whether working
 - _____ Determine condition/safety of electrical and plumbing features

Investigation

- _____ Determine condition/cleanliness of sleeping areas and items, clothing for child, etc.
- _____ Evidence of alcohol or drugs in home
- _____ In physical abuse/homicide cases:
 - _____ Evidence of motive for abuse (soiled underwear, bedding, diapers, medication for colic)
 - _____ Photos/videos/diagrams of scene
 - _____ Measurements of areas/items involved
 - _____ Note surface child supposedly landed on in "fall" case—e.g., wood, concrete, carpeted, etc., and measure distance from child's supposed position to point of impact
 - _____ Photograph/seize items involved (objects which child allegedly fell from or landed on)
 - _____ Instruments used to discipline child
 - _____ Evidence of child's blood (on floor, wall, object)
 - _____ Check wastebaskets, trash receptacles
 - _____ Items listed in criminal neglect section above

Any Relevant Evidence From Suspect, Suspect's Residence, Office, etc.

- _____ Use search warrant if necessary; always request consent
- _____ Photos to show suspect's appearance and/or unusual/distinctive physical features
- _____ Fingerprints
- _____ Hair, blood, saliva, semen, fingernail scrapings, dental impressions as applicable to facts
- _____ Handwriting exemplars, voice tapes
- _____ Clothing with potential evidentiary value
- _____ Occupancy papers
- _____ Phone records
- _____ Bank or credit card records
- _____ Work records
- _____ Drugs or alcohol, medication provided to child by suspect
- _____ Drugs or alcohol, medication used to cure suspect's venereal disease
- _____ Pictures, negatives, videos, home movies of alleged victim or other children
- _____ Camera and/or developing equipment
- _____ Weapons/implements used to threaten or injure child
- _____ Items left at suspect's or with suspect by child
- _____ Pornographic items (films, pictures, magazines, videos, etc.)
- _____ Sexual aids or devices
- _____ Computer records, journals, calendars, diaries, address books, etc.
- _____ Any unique/distinctive items described by child (furnishings, pictures, clothing, lubricants, etc.)
- _____ Test suspect for relevant sexually transmitted diseases; always request consent to test and accompany suspect or obtain search warrant or court order immediately

INVESTIGATION AND PROSECUTION OF CHILD ABUSE

12. USE ADDITIONAL INVESTIGATIVE TECHNIQUES AS APPROPRIATE/LAWFUL

- _____ Obtain 911 tape
- _____ Wire tap orders/pen registers
- _____ Undercover officer surveillance
- _____ Video surveillance
- _____ Polygraph or Psychological Stress Evaluation (PSE) of suspect
- _____ Special crime lab testing/analysis
- _____ Consultation with outside experts
- _____ One party consent calls by child to suspect
- _____ Other

554 F.3d 1170, 09 Cal. Daily Op. Serv. 602, 2009 Daily Journal D.A.R. 704, 2009 Daily Journal D.A.R. 1537
(Cite as: 554 F.3d 1170)

H

United States Court of Appeals,
Ninth Circuit.

Craig Arthur **HUMPHRIES**; Wendy Dawn Aborn
Humphries, Plaintiffs-Appellants,

v.

COUNTY OF LOS ANGELES; Leroy Baca, individually and in his official capacity as Los Angeles County Sheriff; Michael L. Wilson, individually and in his official capacity as a Detective and/or Deputy of the Los Angeles County Sheriff's Department; Charles T. Ansberry, individually and in his official capacity as a Detective of the Los Angeles County Sheriff's Department; Bill Lockyer, Attorney General, in his official capacity as Attorney General of the State of California, Defendants-Appellees.

No. 05-56467.

Argued and Submitted Oct. 19, 2007.

Filed Nov. 5, 2008.

Amended Jan. 15, 2009.

Second Amendment Jan. 30, 2009.

Background: Parents who had been arrested on charges of child abuse and felony torture, but subsequently found “factually innocent” after charges were dismissed, brought § 1983 action against state and county defendants, alleging that their continued listing in California’s Child Abuse Central Index (**CACI**), pursuant to Child Abuse and Neglect Reporting Act (CANRA), violated due process. The United States District Court for the Central District of California, *James V. Selna, J.*, granted in part defendants’ summary judgment motion, dismissing claims related to the arrests and the continued listing in **CACI**. Parents appealed dismissal of their **CACI**-related claims.

Holdings: On denial of rehearing, the Court of Appeals, *Bybee*, Circuit Judge, held that:

- (1) erroneous listing in **CACI** satisfied “stigma” criterion of “stigma-plus” due process test;
- (2) “plus” criterion of “stigma-plus” due process test was satisfied by statutory scheme for consulting **CACI**;
- (3) governmental interest factor did not weigh against

requiring state to furnish additional process for correction of erroneous **CACI** listings;

(4) risk of erroneous deprivation weighed against finding of adequacy of existing safeguards against erroneous listings in **CACI**;

(5) CANRA violated procedural due process;

(6) individual officers of county sheriff’s department were entitled to qualified immunity; and

(7) triable issues existed regarding whether county adopted a custom or policy by failing to create an independent procedure that would allow parents to challenge their listing.

Affirmed in part and reversed and remanded in part.

Opinion, 547 F.3d 1117, withdrawn and superseded.

West Headnotes

[1] Civil Rights 78  **1304****78 Civil Rights****78III Federal Remedies in General**

78k1304 k. Nature and Elements of Civil Actions. Most Cited Cases

To establish prima facie case under § 1983, plaintiff must establish that: (1) conduct complained of was committed by person acting under color of state law, and (2) conduct violated right secured by Constitution and laws of United States. 42 U.S.C.A. § 1983.

[2] Civil Rights 78  **1376(1)****78 Civil Rights****78III Federal Remedies in General**

78k1372 Privilege or Immunity; Good Faith and Probable Cause

78k1376 Government Agencies and Officers

78k1376(1) k. In General. Most Cited Cases

In § 1983 action, even if there is qualified immunity issue, court must still consider threshold question of existence or nonexistence of constitutional right as first inquiry. 42 U.S.C.A. § 1983.

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[3] Constitutional Law 92  **3867**

92 Constitutional Law

92XXVII Due Process

92XXVII(B) Protections Provided and Deprivations Prohibited in General

92k3867 k. Procedural Due Process in General. Most Cited Cases

In procedural due process claims, the deprivation of a constitutionally protected interest is not itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law 92  **3867**

92 Constitutional Law

92XXVII Due Process

92XXVII(B) Protections Provided and Deprivations Prohibited in General

92k3867 k. Procedural Due Process in General. Most Cited Cases

Court's analysis of procedural due process claims proceeds in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the State, and the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient. U.S.C.A. Const.Amend. 14.

[5] Constitutional Law 92  **4040**

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)1 In General

92k4040 k. Reputation; Defamation. Most Cited Cases

Procedural due process protections apply to reputational harm only when plaintiff suffers stigma from governmental action, plus alteration or extinguishment of right or status previously recognized by state law. U.S.C.A. Const.Amend. 14.

[6] Constitutional Law 92  **4403**

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)18 Families and Children

92k4400 Protection of Children; Child Abuse, Neglect, and Dependency

92k4403 k. Reports and Lists. Most Cited Cases

Infants 211  **133**

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k133 k. Juvenile Records. Most Cited Cases

Parents' erroneous listing in California's Child Abuse Central Index (**CACI**) satisfied "stigma" criterion of "stigma-plus" test for determining whether reputational harm qualifies as liberty interest protected under Due Process Clause. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Penal Code § 11170(a).

[7] Constitutional Law 92  **4403**

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)18 Families and Children

92k4400 Protection of Children; Child Abuse, Neglect, and Dependency

92k4403 k. Reports and Lists. Most Cited Cases

Infants 211  **133**

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k133 k. Juvenile Records. Most Cited Cases

Parents who had been erroneously listed in California's Child Abuse Central Index (**CACI**) satisfied "plus" criterion of "stigma-plus" test for determining whether reputational harm qualifies as liberty interest protected under Due Process Clause; tangible burden was imposed on parents' ability to obtain rights or status recognized by state law, since state statutes

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mandated that licensing agencies search CACI prior to granting some rights and benefits including receiving placement or custody or relative's child, and since CACI would be reflexively consulted prior to conferral of other legal rights even absent statutory mandate. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Penal Code § 11170(a, b).

[8] Constitutional Law 92 ↪ 4040

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)1 In General

92k4040 k. Reputation; Defamation.

Most Cited Cases

Where state statute creates both stigma and tangible burden on individual's ability to obtain right or status recognized by state law, individual's liberty interest, protected under Due Process Clause, has been violated; tangible burden exists where law effectively requires agencies to check stigmatizing list and investigate any adverse information prior to conferring legal right or benefit, or where plaintiff can show that, as practical matter, law creates framework under which agencies reflexively check stigmatizing list, whether by internal regulation or custom, prior to conferring legal right or benefit. U.S.C.A. Const.Amend. 14.

[9] Constitutional Law 92 ↪ 4040

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)1 In General

92k4040 k. Reputation; Defamation.

Most Cited Cases

An injury that results merely from simple defamation is not a constitutional liberty interest under the "stigma-plus" test for due process violation. U.S.C.A. Const.Amend. 14.

[10] Constitutional Law 92 ↪ 3875

92 Constitutional Law

92XXVII Due Process

92XXVII(B) Protections Provided and Depri-

vations Prohibited in General

92k3875 k. Factors Considered; Flexibility and Balancing. Most Cited Cases

Adequacy of procedural safeguards for infringement of liberty or property interest protected under Due Process Clause depends on balancing of three factors: (1) private interest affected by official action; (2) risk of erroneous deprivation and probable value of additional procedural safeguards; and (3) governmental interest, including fiscal and administrative burdens of additional procedures. U.S.C.A. Const.Amend. 14.

[11] Constitutional Law 92 ↪ 4403

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)18 Families and Children

92k4400 Protection of Children; Child Abuse, Neglect, and Dependency

92k4403 k. Reports and Lists. Most Cited Cases

Infants 211 ↪ 133

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k133 k. Juvenile Records. Most Cited Cases

Governmental interest factor did not weigh against requiring California to furnish additional process for correction of erroneous listings in its Child Abuse Central Index (CACI), in parents' § 1983 due process action challenging their continued, erroneous listing; although state had significant interest in maintaining even "inconclusive" reports in database, it also had interest in not maintaining incorrect or false information, and affording additional procedures for challenges to listings constituted type of administrative costs state governments were expected to shoulder. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983; West's Ann.Cal.Penal Code §§ 11169, 11170.

[12] Constitutional Law 92 ↪ 4403

92 Constitutional Law

92XXVII Due Process

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92XXVII(G) Particular Issues and Applications

92XXVII(G)18 Families and Children
92k4400 Protection of Children; Child Abuse, Neglect, and Dependency
92k4403 k. Reports and Lists. Most Cited Cases

Infants 211 ☞133

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k133 k. Juvenile Records. Most Cited Cases

Risk of erroneous deprivation and probable value of additional procedural safeguards weighed against finding of adequacy as to existing safeguards against erroneous listings in California's Child Abuse Central Index (CACI), on listed parents' § 1983 due process challenge; erroneous listings were quite likely, given very low "not unfounded" threshold for initial listing, and safeguards afforded were inadequate, including listee's right to attempt to persuade investigator of error, and consulting agency's responsibility to reach its own independent conclusion. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983; West's Ann.Cal.Penal Code §§ 11165.12(a), 11169(a, b), 11170(a), (b)(9)(A).

[13] Constitutional Law 92 ☞4403

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)18 Families and Children
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92k4403 k. Reports and Lists. Most Cited Cases

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211 Infants

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211VIII(A) In General

211k132 k. Statutory Provisions and Rules.

Most Cited Cases

Infants 211 ☞133

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k133 k. Juvenile Records. Most Cited Cases

On due process challenge to statutory scheme for California's Child Abuse Central Index (CACI), scheme's permitting listee to attempt to persuade investigator of error constituted inadequate safeguard against erroneous listing; statutes did not require investigator to respond to such requests, and provided no standard for investigator's reevaluation of his judgment, and no one other than investigator was required to respond, so that investigator was placed in dual role as adjudicator. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Penal Code § 11169(b), 11170(a).

[14] Constitutional Law 92 ☞4403

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)18 Families and Children
92k4400 Protection of Children; Child Abuse, Neglect, and Dependency
92k4403 k. Reports and Lists. Most Cited Cases

Infants 211 ☞132

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k132 k. Statutory Provisions and Rules. Most Cited Cases

Infants 211 ☞133

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

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211k133 k. Juvenile Records. Most Cited Cases

On due process challenge to statutory scheme for California's Child Abuse Central Index (**CACI**), scheme's requiring consulting agency to base its decision regarding listee on its own "independent conclusions" constituted inadequate safeguard against erroneous listing; consulting agency's independent review would occur only after listing and its attendant stigma, and consulting agency could not correct or affect **CACI** listing itself. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Penal Code § 11170(b)(9)(A).

[15] Constitutional Law 92 ↪4403

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)18 Families and Children

92k4400 Protection of Children; Child Abuse, Neglect, and Dependency

92k4403 k. Reports and Lists. Most

Cited Cases

Infants 211 ↪132

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k132 k. Statutory Provisions and Rules.

Most Cited Cases

Infants 211 ↪133

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k133 k. Juvenile Records. Most Cited

Cases

On due process challenge to statutory scheme for California's Child Abuse Central Index (**CACI**), statutory provision for some listees to obtain judicial review after denial of licenses or other statutory privileges because of listing constituted inadequate safeguard against erroneous listing; even if individual was ultimately successful and obtained license or other statutory privilege in spite of listing, it had no

apparent impact on listing itself. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Penal Code §§ 11169, 11170; West's Ann.Cal.Health & Safety Code § 1526; West's Ann.Cal.Fam.Code § 8720.

[16] Constitutional Law 92 ↪4403

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)18 Families and Children

92k4400 Protection of Children; Child Abuse, Neglect, and Dependency

92k4403 k. Reports and Lists. Most

Cited Cases

Infants 211 ↪132

211 Infants

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211VIII(A) In General

211k132 k. Statutory Provisions and Rules.

Most Cited Cases

Infants 211 ↪133

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(A) In General

211k133 k. Juvenile Records. Most Cited

Cases

Child Abuse and Neglect Reporting Act (CANRA), which governed maintenance of state's Child Abuse Central Index (**CACI**), violated Due Process Clause by failing to afford persons listed fair opportunity to challenge allegations against them; CANRA lacked both meaningful procedural safeguards before initial placement and effective process for removal of erroneous listings, erroneous listees had strong private interest in not being stigmatized, and governmental interest in protecting children from abuse would not be harmed by system that sought to clear those falsely accused. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Penal Code §§ 11169, 11170.

[17] Civil Rights 78 ↪1376(2)

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78 Civil Rights

78III Federal Remedies in General

78k1372 Privilege or Immunity; Good Faith and Probable Cause

78k1376 Government Agencies and Officers

78k1376(2) k. Good Faith and Reasonableness; Knowledge and Clarity of Law; Motive and Intent, in General. Most Cited Cases
Officials who violate constitutional rights under color of law are entitled to qualified immunity from a § 1983 action unless it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. 42 U.S.C.A. § 1983.

[18] Civil Rights 78 ↪ 1376(6)

78 Civil Rights

78III Federal Remedies in General

78k1372 Privilege or Immunity; Good Faith and Probable Cause

78k1376 Government Agencies and Officers

78k1376(6) k. Sheriffs, Police, and Other Peace Officers. Most Cited Cases
Sheriff's detective who assisted in arrest of parents on charges of child abuse, and county sheriff who supervised detective, were entitled to qualified immunity in parents' subsequent § 1983 due process action challenging their listing in state child abuse database, since neither was in any way involved in listing decision. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

[19] Civil Rights 78 ↪ 1355

78 Civil Rights

78III Federal Remedies in General

78k1353 Liability of Public Officials

78k1355 k. Vicarious Liability and Respondeat Superior in General; Supervisory Liability in General. Most Cited Cases

Under § 1983, a supervisor is only liable for his own acts; where the constitutional violations were largely committed by subordinates, the supervisor is liable only if he participated in or directed the violations. 42 U.S.C.A. § 1983.

[20] Civil Rights 78 ↪ 1376(6)

78 Civil Rights

78III Federal Remedies in General

78k1372 Privilege or Immunity; Good Faith and Probable Cause

78k1376 Government Agencies and Officers

78k1376(6) k. Sheriffs, Police, and Other Peace Officers. Most Cited Cases
Officer who obtained arrest warrants for parents on charges of child abuse, effected arrest, and completed investigation report that led to parents' being listed in state's child abuse database was entitled to qualified immunity in parents' subsequent § 1983 due process action challenging their listing; officer relied on state statutory system governing maintenance of database that was not so obviously unconstitutional as to suggest to officer that he ought not abide by statutes' provisions. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983; West's Ann.Cal.Penal Code §§ 11169, 11170.

[21] Federal Civil Procedure 170A ↪ 2491.5

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C)2 Particular Cases

170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Genuine issue of material fact regarding whether County adopted a custom or policy by failing to create an independent procedure that would allow parents, who were erroneously listed on California's Child Abuse Central Index (CACI) with no opportunity to be removed under statute in violation of Due Process Clause, to challenge their listing precluded summary judgment in parents' § 1983 action on qualified immunity grounds. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983; West's Ann.Cal.Penal Code §§ 11169, 11170.

West Codenotes

Held Unconstitutional West's Ann.Cal.Penal Code §§ 11169, 11170. *1174 Esther G. Boynton (argued), Beverly Hills, CA, for the plaintiffs-appellants.

Mark D. Rutter, Carpenter, Rothans & Dumont, Los Angeles, CA; Martin Stein, Alison Turner, Lillie Hsu (argued), Greines, Martin, Stein & Richland LLP, Los Angeles, CA, for the defendants-appellees.

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Edmund G. Brown Jr., Attorney General of the State of California, David S. Chaney, Chief Assistant Attorney General, James T. Schiavenza, Senior Assistant Attorney General, Marsha S. Miller, Supervising Deputy Attorney General, Paul C. Epstein (argued), Deputy Attorney General, State of California Department of Justice, Office of the Attorney General, Los Angeles, CA, for the defendant-appellee.

Carolyn A. Kubitschek, Lansner & Kubitschek, New York, NY, for the amicus National Coalition for Child Protection Reform.

Appeal from the United States District Court for the Central District of California; James V. Selna, District Judge, Presiding. D.C. No. CV-03-00697-JVS.

Before: JAY S. BYBEE and MILAN D. SMITH, JR., Circuit Judges, and RICHARD MILLS,^{FN*} District Judge.

FN* The Honorable Richard Mills, Senior United States District Judge for the Central District of Illinois, sitting by designation.

ORDER

The opinion, filed November 5, 2008, [547 F.3d 1117], is amended as follows:

1. At [547 F.3d at 1126], replace “substantiated” with “substantiated.”
2. At [547 F.3d at 1128 n. 8], replace “If the parties provide” with “If a party provides.”
3. At [547 F.3d at 1130], replace “County's CACI-related policies” with “County's and State's CACI-related policies.”
4. At [547 F.3d at 1142 n. 15], replace “district court” with “district attorney”; also replace “affect” with “effect.”
5. At [547 F.3d at 1143] replace “very type of liberty interest” with “very type of interference with a liberty interest.”

6. At [547 F.3d at 1148], delete the following: “By failing to do so, LASD's custom and policy violated the **Humphries'** constitutional rights. Therefore, we deny the County summary judgment on this issue.” Add the following:

By failing to do so, it is possible that the LASD adopted a custom and policy that violated the **Humphries'** constitutional rights. However, because this issue is not clear based on the record before us on appeal-and because the issue was not briefed by the parties-we remand to the district court to determine whether or not the County is entitled to qualified immunity.

*1175 7. At [547 F.3d at 1148], replace “judgment to the County” with “judgment to the State and the County”

In addition, the panel's order, filed November 5, 2008, addressing the parties' costs is amended to delete “and fees.”

With these amendments, the panel has voted to otherwise deny appellee County of Los Angeles' petition for rehearing. Judge Bybee and Judge Smith have voted to deny the petition for rehearing en banc, and Judge Mills recommended denying the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R.App. P. 35. Appellee County of Los Angeles's Petition for Rehearing and Rehearing En Banc is DENIED.

The panel has voted to deny appellee Bill Lockyer's petition for rehearing. Judge Bybee and Judge Smith have voted to deny the petition for rehearing en banc, and Judge Mills recommended denying the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R.App. P. 35. Appellee Bill Lockyer's Petition for Rehearing and Suggestion for Rehearing En Banc is DENIED.

With these amendments, the panel has voted to grant appellants' motion for clarification. Appellant's Motion for Clarification is GRANTED.

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With these amendments, the panel has also voted to grant in part appellant's petition for rehearing or reconsideration of the November 5, 2008 order. Appellant's Petition for Rehearing or Reconsideration of the November 5, 2008 Order is GRANTED IN PART.

No further petitions for rehearing or rehearing en banc will be accepted.

ORDER

The opinion, originally filed November 5, 2008, and amended January 15, 2009, [547 F.3d 1117], is amended as follows:

At [547 F.3d at 1148], delete "we remand to the district court to determine whether or not the County is entitled to qualified immunity." Add the following: "we remand to the district court to determine the County's liability under *Monell*."

OPINION

BYBEE, Circuit Judge:

Appellants Craig and Wendy **Humphries** are living every parent's nightmare. Accused of abuse by a rebellious child, they were arrested, and had their other children taken away from them. When a doctor confirmed that the abuse charges could not be true, the state dismissed the criminal case against them. The **Humphries** then petitioned the criminal court, which found them "factually innocent" of the charges for which they had been arrested, and ordered the arrest records sealed and destroyed. Similarly, the juvenile court dismissed all counts of the dependency petition as "not true."

Notwithstanding the findings of two California courts that the **Humphries** were "factually innocent" and the charges "not true," the **Humphries** were identified as "substantiated" child abusers and placed on California's Child Abuse Central Index ("the **CA-CI**"), a database of known or suspected child abusers. As the **Humphries** quickly learned, California offers no procedure to remove their listing on the database as suspected child abusers, and thus no opportunity to clear their names. More importantly, California

makes the **CACI** database available to a broad array of government*1176 agencies, employers, and law enforcement entities and even requires some public and private groups to consult the database before making hiring, licensing, and custody decisions.

This case presents the question of whether California's maintenance of the **CACI** violates the Due Process Clause of the Fourteenth Amendment because identified individuals are not given a fair opportunity to challenge the allegations against them. We hold that it does.

I. FACTS AND PROCEEDINGS

A. *The Statutory Scheme*

1. The Child Abuse and Neglect Reporting Act

California maintains a database of "reports of suspected child abuse and severe neglect," known as the Child Abuse Central Index or **CACI**. CAL. PENAL CODE § 11170(a)(2). California has collected such information since 1965, *see* 1965 Cal. Stat. 1171, and since 1988, the maintenance of the **CACI** has been governed by the Child Abuse and Neglect Reporting Act ("CANRA"), CAL. PENAL CODE §§ 11164-11174.

a. Inclusion in the **CACI**

There are many different ways a person can find themselves listed in the **CACI**. CANRA mandates that various statutorily enumerated individuals report instances of known or suspected child abuse and neglect either to a law enforcement agency or to a child welfare agency. *Id.* § 11165.9. These agencies, in turn, are required to conduct "an active investigation," *id.* § 11169(a), which involves investigating the allegation and determining whether the incident is "substantiated, inconclusive, or unfounded," CAL. CODE REGS. tit. 11, § 901(a) (2008).

In an attempt by the legislature to demonstrate how many negatives it could place in a single provision, CANRA then provides that the agency shall send the California Department of Justice ("CA DOJ") a written report "of every case it investigates of known or suspected child abuse or severe neglect which is de-

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terminated not to be unfounded,” but that the “agency shall not forward a report to the [CA DOJ] unless it has conducted an active investigation and determined that the report is not unfounded.” CAL. PENAL CODE § 11169(a). CANRA defines a report as “unfounded” if it is “determined by the investigator who conducted the investigation[1] to be false, [2] to be inherently improbable, [3] to involve an accidental injury, or [4] not to constitute child abuse or neglect.” Id. § 11165.12(a). There is no further definition of what it means for a report to be “false” or “inherently improbable,” and no discussion of the standard of proof by which that determination is to be made. Presumably, a report is “not unfounded” if the investigator determines that it meets none of these four criteria.

CANRA defines two other categories of reports, those that are “substantiated” and those that are “inconclusive.” A “substantiated report” means that “the investigator who conducted the investigation” determined that the report “constitute[d] child abuse or neglect ... based upon evidence that makes it more likely than not that child abuse or neglect occurred.” Id. § 11165.12(b). An “inconclusive report” means that “the investigator who conducted the investigation” found the report “not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect ... occurred.” Id. § 11165.12(c). Both inconclusive and substantiated reports are submitted to the CA DOJ for inclusion in the CACI. *See id.* §§ 11169(a), (c), 11170(a)(3).

*1177 To summarize, we understand section 11169(a), when read in conjunction with section 11165.12, to require agencies to investigate all reports of child abuse. Each reported incident of child abuse must then be categorized as (1) “substantiated,” meaning it is more likely than not that child abuse or neglect occurred; (2) “inconclusive,” meaning there is insufficient evidence to determine whether child abuse and/or neglect occurred; or (3) “unfounded,” meaning the report is false, inherently improbable, an accidental injury, or does not constitute child abuse or neglect. It appears that “substantiated” and “inconclusive” reports include everything that is “not unfounded.” The agency must submit both “substantiated” and “inconclusive” reports for inclusion in the CACI.

Given the high standard of proof required for a report to be dismissed as “unfounded”—false or inherently improbable—and the low standard of proof required for a report to be categorized as “substantiated”—more likely than not—with “inconclusive” presumably encompassing everything in between, we understand the minimum evidence required for CANRA to compel the submission of a report to be something less than a preponderance, but more than a scintilla. CANRA further requires that the CA DOJ “shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to” the process described above. Id. § 11170(a)(1). The CACI is maintained by means of a computerized data bank. *See People v. Bernstein*, 197 Cal.App.3d Supp. 34, 243 Cal.Rptr. 363, 367 (1987).

b. Consequences of Inclusion in the CACI

CANRA states that the CA DOJ shall make the information in the CACI available to a broad range of third parties for a variety of purposes. For example, the information in the CACI is made available

to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties ... concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisory or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to [various statutory sections].

CAL. PENAL CODE § 11170(b)(4). The information is also provided to persons “making inquiries for purposes of pre-employment background investigations for peace officers, child care licensing or employment, adoption, or child placement.” CAL. CODE REGS. tit. 11, § 907(b) (2008); *see also* CAL. PENAL CODE § 11170(b)(8). The “Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate” also has access to CACI information. CAL. PENAL CODE § 11170(b)(5).

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The scope of CANRA is not limited to California institutions. CANRA makes the CACI information available “to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent or relative caregiver for placement of a child” so long as “the out-of-state statute or interstate compact provision that requires that the information received in response to the inquiry shall be disclosed and used for no purpose other than conducting background checks in foster or adoptive cases.” *Id.* § 11170(e)(1). Thus, it appears that if another state’s agencies require CACI information for foster or adoptive purposes, *1178 the CA DOJ is also obligated to make it available.^{FN1}

FN1. Although the CACI information can apparently be released under these statutes to administrative agencies, private licensing agencies, private employers, or law enforcement entities, we will generally refer to these groups collectively throughout the opinion as “agencies.”

CANRA provides that agencies obtaining the CACI information are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer. *Id.* § 11170(b)(9)(A). The same provision also applies to out of state agencies that receive CACI information. *Id.* § 11170(e)(2).

Although CANRA itself only requires that the CA DOJ make this information available, other statutory provisions mandate that certain agencies consult the CACI prior to issuing a variety of state-issued licenses or other benefits. For example, California Health and Safety Code § 1522.1 provides that “[p]rior to granting a license to, or otherwise approving, any individual to care for children, the [State Department of Social Services] shall check the [CACI].” CAL. HEALTH & SAFETY CODE § 1522.1(a); *see id.* § 1502(b). Similarly, in order to work as a volunteer in crisis nurseries, California law mandates that “[v]olunteers shall complete a [CACI]

check.” *Id.* § 1526.8(b)(2). Also, “[p]rior to granting a license to or otherwise approving any individual to care for children in either a family day care home or a day care center, the [State Department of Social Services] shall check the [CACI].” *Id.* § 1596.877(b).^{FN2} California Welfare and Institutions Code § 361.4 similarly requires that

FN2. We also note that, although it does not specifically mandate the agency to reference the CACI, in language similar to CANRA, § 1596.607 of the Health and Safety Code allows DSS to deny a “trustline applicant” if there is evidence of “substantiated child abuse.” CAL. HEALTH & SAFETY CODE § 1596.607.

[w]henver a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the [CACI] ... to be requested from the [CA DOJ]. The [CACI] check shall be conducted on all persons over 18 years of age living in the home.

CAL. WELF. & INST. CODE § 361.4(c). Finally, California has implemented a pilot program through the State Department of Social Services (“DSS”) to create a “child-centered resource family approval process” in lieu of existing processes for “licensing foster family homes, approving relatives and nonrelative extended family members as foster care providers, and approving adoptive families.” *Id.* § 16519.5(a). The approval standards under this statute include “utilizing a check of the [CACI].” *Id.* § 16519.5(d)(1)(A)(i). Based on these provisions, it is apparent that the CACI listing plays an integral role in obtaining many rights under California law, including employment, licenses, volunteer opportunities, and even child custody. *See also* Alisha M. Santana, *A Pointer System that Points to the Nonexistent: Problems with the Child Abuse Central Index (CACI)*, 4 WHITTIER J. CHILD & FAM. ADVOC. 115, 115-16 (2004) (describing the case of a grandmother denied custody of her grandchildren*1179 because DSS discovered two hits on the CACI matching her name).

c. Removal From the CACI

CANRA requires that at the time the agency forwards

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the report to the CA DOJ for inclusion in the CACI, “the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the [CACI].” CAL. PENAL CODE § 11169(b). The identified child abuser may obtain the report of suspected child abuse and information contained within their CACI listing. *Id.* § 11167.5(b)(11). Understandably, notified individuals who believe that they have wrongfully been included in the CACI would want to be removed from the CACI as expeditiously as possible. CANRA provides that an individual who was originally listed in the CACI pursuant to an “inconclusive or unsubstantiated report” will be deleted from the CACI after ten years, as long as no subsequent report containing his or her name is received within that time period. *Id.* § 11170(a)(3). There is no provision for removing an individual who was originally listed in the CACI pursuant to a “substantiated report”; such a person apparently remains listed in the CACI permanently. *See id.* § 11170(a)(1).

CANRA offers no procedure for challenging a listing on the CACI. CANRA does provide that “[i]f a report has previously been filed which subsequently proves to be unfounded, [the CA DOJ] shall be notified in writing of that fact and shall not retain the report.” *Id.* § 11169(a). The statute does not describe *who* must notify the CA DOJ of that fact, or how the determination that a report has “subsequently prove[d] to be unfounded” is to be made. CANRA also provides that the CACI “shall be continually updated by the department and shall not contain any reports that are determined to be unfounded.” *Id.* § 11170(a)(1). By using the passive voice, CANRA fails to specify who is supposed to determine that a report is unfounded, or how to make that decision in order to remove unfounded reports from the CACI.

Apparently, only the submitting agency can decide if a report has proved unfounded. CANRA provides that “[t]he submitting agencies are responsible for the accuracy, completeness, and retention of the reports,” thus suggesting that the submitting agencies are also responsible for removing reports that are determined to be unfounded. *Id.* § 11170(a)(2). Furthermore, as explained above, CANRA defines an “unfounded report” as “a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect.” *Id.*

§ 11165.12(a) (emphasis added); *see id.* § 11165.12(b) (a “substantiated report” means “a report that is *determined by the investigator ...*”) (emphasis added). Whether this definition solely references the initial determination of listing someone on the CACI, or whether it also constitutes the definition for a continuing obligation to remove someone from the CACI is unclear. These provisions suggest, however, that the investigator and agency that conducted the investigation are responsible for making, and thus correcting, the determination that a report is unfounded.

Although CANRA itself provides no procedure for an individual to challenge a CACI listing, nothing in the statute prevents a submitting agency from enacting some procedure to allow an individual to challenge their listing or seek to have a determination made that a report is “unfounded.” *See id.* § 11170(a)(2). CANRA also contemplates that the CA DOJ “may adopt rules governing recordkeeping and reporting,” which may allow the CA DOJ to enact some procedure beyond that provided*1180 by CANRA. *Id.* § 11170(a)(1). To this point, we are unaware of any regulations that provide additional regulatory procedures for challenging a listing on the CACI or the validity of the underlying report. To the contrary, the CA DOJ explicitly “presumes that the substance of the information provided is accurate and does not conduct a separate investigation to verify the accuracy of the investigation conducted by the submitting agency.” CAL. CODE REGS. tit. 11, § 904 (2008).

B. *The Humphries' Nightmare*

The **Humphries'** nightmarish encounter with the CANRA system began on March 17, 2001, when S.H., Craig's fifteen year-old daughter from a previous marriage, took their car and drove to her biological mother's home in Utah. S.H. had previously lived in Utah with her biological mother and stepfather and their three younger children. In June 2000, S.H.'s biological mother called Craig and said she wanted S.H. to live with the **Humphries** in Valencia, California, on a trial basis. The night of March 17, S.H. took the **Humphries'** car without their knowledge, drove to her mother's home in Utah, and reported that the **Humphries** had been abusing her for several months. An emergency room physician diagnosed “non-accidental trauma, with extremity contu-

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sions.”

1. The **Humphries'** Arrest and Inclusion in the **CACI**

Based on an investigation from the Utah police, the victim's statement, and emergency room records describing the victim's allegations, on April 11, 2001, Michael L. Wilson, a detective for the Family Crimes Bureau of the Los Angeles County Sheriff's Department (“LASD”), obtained probable cause warrants to arrest the **Humphries** for cruelty to a child, CAL. PENAL CODE § 273a(a), and torture, *id.* § 206. On April 16, Detective Wilson, accompanied by fellow detective Charles Ansberry, arrested Craig and Wendy **Humphries**, and booked them on the single charge of felony torture under California Penal Code § 206. The same day, a Sheriff's deputy, without a warrant, picked up the **Humphries'** two other children from their schools and placed them in protective custody.^{FN3} Both children denied any fear of abuse or mistreatment and indicated their desire to return home. Custody of the children was then transferred to the County Department of Children and Family Services, which placed the children in foster care.

^{FN3}. The **Humphries** have asserted a § 1983 claim regarding the warrantless seizure of the children. That claim is not before us on this appeal.

On April 17, 2001, the day after the **Humphries** were arrested, Detective Wilson completed a child abuse investigation report identifying the **Humphries'** case as a “substantiated report” of child abuse.^{FN4} Pursuant to CANRA, this information was sent to the CA DOJ, which in turn created a **CACI** listing identifying Craig and Wendy **Humphries** as child abuse suspects with a “substantiated” report.

^{FN4}. At the time that Detective Wilson filed his report, a “substantiated” report of child abuse was defined as one where the investigator found “credible evidence” of abuse. CAL. PENAL CODE § 11165.12(b) (2001). As discussed above, § 11165.12 has since been amended to define a “substantiated” report as one “determined by the investigator who conducted the investigation to constitute child abuse or neglect ... based upon evidence that makes it more likely than not

that child abuse or neglect ... occurred.” *Id.* § 11165.12(b).

2. Judicial Proceedings Exonerating the **Humphries**

a. The Criminal Case

On April 18, 2001, Detective Wilson filed a complaint in the Los Angeles County *1181 Superior Court, charging the **Humphries** with corporal injury to a child, CAL. PENAL CODE § 273d(a), and cruelty to a child by endangering health, *id.* § 273a(b), both misdemeanors.

On August 29, 2001, the **Humphries'** criminal case was dismissed.^{FN5} The prosecutor had learned that in November 2000, Dr. Isaac Benjamin Paz surgically removed a melanoma on S.H.'s shoulder. S.H. had follow-up visits with Dr. Paz in December 2000 and March 2001, periods that corresponded with S.H.'s claims of abuse. On all these occasions, Dr. Paz examined S.H.'s entire body, and saw no sign of abuse. The prosecutor determined that this information “contradict[ed] the basic part of [S.H.'s] testimony that she was injured during the entire time” and agreed that the **Humphries** criminal case for the misdemeanor charges should be dismissed in furtherance of justice. The felony torture charges on which the **Humphries** had originally been booked were also dismissed.

^{FN5}. There is some dispute as to whether the felony charge for which the **Humphries** were originally booked on April 16 is distinct from the misdemeanor charge filed on April 18. The **Humphries** contend that the district attorney rejected the attempt to file a felony action against them but allowed the case to be filed for misdemeanor consideration. According to the **Humphries** it was this misdemeanor complaint that was dismissed on August 29, 2001. Because this case is before us on a motion for summary judgment by the state and county parties, we assume the **Humphries'** account to be true, and from the record it appears that the **Humphries** were never indicted on the felony charge. Regardless, the petition to seal and destroy their arrest records indicates that the disposition of the torture charges was a

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“court dismissal.”

The **Humphries** then successfully petitioned the criminal court under California Penal Code § 851.8 for orders finding them “factually innocent” of the felony torture charge,^{FN6} and requiring the arrest records pertaining to that charge be sealed and destroyed.^{FN7} A finding of factual innocence*1182 means that the court found “that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made.” CAL. PENAL CODE § 851.8(b).

FN6. The **Humphries** argue that the district court erred in concluding that the finding of “factual innocence” was not admissible as evidence under California law. We disagree. California Penal Code § 851.8(i) clearly states that a finding of factual innocence “shall not be admissible as evidence in any action.” CAL. PENAL CODE § 851.8(i). The **Humphries** contend that § 851.8(i) is qualified by § 851.8(k), which provides that sealed records may be “submitted into evidence” on “a showing of good cause” in a civil action brought by the arrested person against the arresting officers or law enforcement jurisdiction. CAL. PENAL CODE § 851.8(k). Section 851.8(k), however, does not allow the “finding of factual innocence” to be submitted into evidence, but rather the underlying “sealed records.”

Nevertheless, neither § 851.8(i) nor § 851.8(k) applies to our use of the factual innocence determination in this opinion. Here, even if the **Humphries** had never been arrested at all, such that there were no § 851.8 arrest warrants to seal, Detective Wilson could have still filed a “substantiated report” resulting in their listing on the CACI. Our determination as to the constitutionality of CANRA is thus not dependent on the underlying arrest. We therefore discuss the factual innocence finding, not as a matter of evidence, but rather as illustrative of the legal quagmire in which the **Humphries** find themselves. Under California law, they could petition a court for a “factual innocence” determi-

nation, but could not challenge their inclusion on the CACI.

FN7. The **Humphries** argue that the district court erred in disregarding the sealing orders as they relate to the information included in their CACI listing. The district court found that the **Humphries'** contention that the Appellees were maintaining records in violation of the Sealing Orders was not properly before the court because the claim was not made in the complaint. We find that the allegations contained in paragraphs 5 and 6 of the complaint sufficiently allege the issue by stating that “the order ... requires that plaintiffs' arrest records be sealed and scheduled for future destruction.... Nevertheless, defendants still refuse to expunge plaintiffs' CACI records.” Insofar as this issue is relevant to future proceedings, the district court may consider the claim.

b. The Juvenile Court Case

On April 17, 2001, in separate, non-criminal proceedings, Detective Wilson requested that Los Angeles County file a juvenile court dependency petition to have the **Humphries'** two children declared dependent children of the juvenile court based on the fact that their “sibling has been abused or neglected.” On April 19, the County filed a dependency petition against the **Humphries** based on S.H.'s allegations. After a hearing on June 12, the juvenile court ordered that the **Humphries** retain custody of their children, and dismissed all counts as “not true.”^{FN8}

FN8. Under the California Rules of Court, the juvenile court is only authorized to find allegations “true” or “not proved.” See CAL. CT. R. 1450(f) & (h) (renumbered and amended as 5.684 effective Jan. 1, 2007). The state and county parties argue that the juvenile court's “not true” finding does not mean that the allegations are affirmatively false. Regardless, there is no dispute that the juvenile court wrote that the allegations were “not true.” Any argument regarding whether the judge should or should not have done so should have been made at the time of the juvenile court proceedings.

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The **Humphries** also argue that the district court erred in failing to give collateral estoppel effect to the juvenile court's "not true" determination. The district court stated in a footnote that while the collateral estoppel argument "would appear to have merit, the Court need not address that issue in view of its ruling." If a party provides a reason for addressing the issue in light of this opinion, on remand the district court shall make a more definitive finding of the collateral effect of the juvenile court's judgment.

3. The **Humphries** Seek Removal from the CACI

As required by CANRA, in May 2001, the **Humphries** were notified that they were listed in the CACI. The notice informed them that if they believed the report was unfounded, and they desired a review, that they should address their request to Detective Wilson. In May 2002, the **Humphries** contacted LASD's Family Crimes Bureau through their attorney. They discovered that Detective Wilson no longer worked at the Bureau and there was no available procedure for them to challenge their listing in the CACI. On May 9, 2002, LASD Sergeant Michael Becker advised the **Humphries'** attorney that after conducting an investigation, the LASD would not reverse its report labeling the **Humphries** as "substantiated" child abusers for the purposes of the CACI. Becker indicated that the fact that charges were filed "would indicate to us that some sort of crime did occur" and the fact that the case was dismissed "would not negate the entries" into the CACI.

In October 2003, the CA DOJ asked LASD to complete a confirmation questionnaire regarding the **Humphries'** CACI listing. The questionnaire was answered by a civilian clerical worker who confirmed that the report was still "substantiated" as of October 31, 2003. Despite the fact that two independent California tribunals had found that the allegations underlying the **Humphries'** CACI listing were "not true" and that the **Humphries** are "factually innocent," the CA DOJ continues to list the **Humphries** in the CACI as substantiated child abusers. Furthermore, because the **Humphries** were listed pursuant to a "substantiated report," they will remain listed on the

CACI indefinitely.

In addition to the harm already dealt to the **Humphries'** reputation by appearing on a list of actual or suspected child abusers,*1183 the **Humphries** have also alleged that the CACI now places a burden on their ability to pursue some of their normal goals and activities. The **Humphries** have indicated that they are hesitant to seek these opportunities for fear that the CACI listing will both influence their ability to obtain certain benefits and further injure their already damaged reputation. For example, the **Humphries** have expressed a desire to work or volunteer at the Florence Crittenton Center in Los Angeles, a community center offering child care and a variety of other services. Bernice Williams, the Human Resources Manager at the center stated, by affidavit, that all adults must undergo a CACI check prior to obtaining clearance to volunteer or teach at the center. Thus, the **Humphries** will have to submit to a CACI search before even having an opportunity to volunteer or work at the center.

Similarly, Wendy currently works as a special education teacher and resource specialist at a public school in California. She possesses a number of teaching credentials that must be periodically renewed in order to maintain her current employment—a renewal process that requires her to apply to the California Commission on Teacher Credentialing ("CCTC"). The **Humphries** have introduced evidence indicating that the information available on the CACI might have an impact on her ability to obtain educational credentials.^{FN9}

^{FN9}. The **Humphries** introduced as an exhibit a letter by Peter P. Castillo, an attorney for the DSS. The letter states that "[t]he law requires that [the Community Care Licensing Division ("CCLD")] check all child care applicants and employees against the CACI" and goes on to note that CCLD will "share information" with CCTC if requested. In response, the state introduced an affidavit from Castillo reporting that the CCTC "is not one of the agencies authorized by statute to receive [CACI] information" and that his statement in the letter regarding shared information only referred to information that CCLD was permitted to disclose.

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Based on this exchange and without giving the **Humphries** an opportunity to respond, the district court found that “it is clear that Wendy cannot and will not be harmed in her pursuit of a teaching credential as a result of being listed on the Index.” Viewing the evidence in the light most favorable to the **Humphries**, Castillo's measured statement did not require the broad conclusion reached by the district court. Thus, insofar as the need arises on remand, the parties are free to introduce additional evidence regarding the obstacles **CACI** places on the opportunity for Wendy to pursue her credentials.

Wendy has also indicated a desire to pursue a degree in psychology from the University of California at Los Angeles. Two courses of interest within the psychology department, 134 A/D and 134 B/E, place all of the students in a child care program licensed by the state of California. To enroll in these classes, all potential students must pay for and submit to a **CACI** check.

4. Procedural History

The **Humphries** initiated this action in federal district court on August 27, 2002. The **Humphries'** First Amended Complaint originally included eight counts based on state and federal claims, but on April 14, 2003, the district court dismissed all the state law counts on a Rule 12(b)(6) motion. In the remaining three claims, the **Humphries** sought relief pursuant to 42 U.S.C. § 1983. They alleged that three actions by California officials deprived them of various rights under the United States Constitution: the **Humphries'** arrest and incarceration, the **Humphries'** initial and continued inclusion in **CACI**, and the seizure and subsequent placement of the **Humphries'** children in temporary protective custody.

*1184 The **Humphries** sought three types of relief based on these claims. The **Humphries** demanded damages for the constitutional violations resulting from the government's conduct. In addition to damages, on the allegations related to the **Humphries'** listing on the **CACI**, the **Humphries** sought an injunction ordering the County of Los Angeles to notify the CA DOJ that LASD's report to the **CACI** is unfounded, and to prohibit the State from retaining or

disclosing the **CACI** records on the **Humphries** based on any report from LASD. The **Humphries** also sought a judicial declaration that CANRA and the County's and State's **CACI**-related policies are unconstitutional because they provide no means for people, such as the **Humphries**, to dispute or expunge their **CACI** listing or to prevent disclosures of the listing and related records.

Appellees, the County of Los Angeles, Sheriff Leroy D. Baca, and Detectives Wilson and Ansberry (“County Appellees”) and California Attorney General Bill Lockyer (“State”) (collectively “Appellees”), moved for summary judgment on all claims. The district court denied Appellees' motion for summary judgment on the § 1983 claim regarding the warrantless seizure of the children, but granted Appellees' motion for summary judgment on the § 1983 claim arising out of the **Humphries'** initial and continued inclusion in the **CACI**, as well as the § 1983 claim arising out of the **Humphries'** arrest and incarceration. The **Humphries** appeal the grant of summary judgment with regard to their claims relating to their inclusion in the **CACI**, arguing that the Appellees' conduct in listing their names on the **CACI** and making **CACI**-related information available to third parties violates their right to due process under the Fourteenth Amendment.

II. ANALYSIS

[1][2] To establish a prima facie case under § 1983, the **Humphries** must establish that: (1) the conduct complained of was committed by a person acting under color of state law; and (2) the conduct violated a right secured by the Constitution and laws of the United States. *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988). Furthermore, the Supreme Court has insisted that even if there is a qualified immunity issue, we must still consider the threshold question of the “existence or nonexistence of a constitutional right as the first inquiry.” *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). There is no question that the **Humphries'** listing on the **CACI** occurs under color of state law. Thus, the issue in this appeal is whether the initial and continued inclusion of the **Humphries** on the **CACI** deprives them of any rights secured by the Constitution and laws of the United States. We find that it does. Accordingly, after our discussion of

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the existence of a constitutional violation we consider whether the individual and institutional Appellees are entitled to immunity for their acts.

A. Procedural Due Process

[3][4] The **Humphries** argue that Appellees violated their Fourteenth Amendment right to procedural due process by listing and continuing to list them on the **CACI**, without any available process to challenge that listing. In procedural due process claims, the deprivation of a constitutionally protected interest “is not itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*.” *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). Our analysis proceeds in two steps: “the first asks whether *1185 there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989) (internal citations omitted). The district court found that the **Humphries**’ listing on the **CACI** did not deprive them of any constitutionally protected liberty or property interest.^{FN10} The court did not reach the second step of the due process analysis.

FN10. We review a district court’s grant of summary judgment *de novo*. *Margolis v. Ryan*, 140 F.3d 850, 852 (9th Cir.1998). In conducting such a review, we must ensure that the district court correctly applied the law and that, viewing the evidence in the light most favorable to the non-moving party, no genuine issues of material fact remain. *Id.*

1. Deprivation of a Protected Liberty Interest

The **Humphries** contend that they have a liberty interest under the “stigma-plus” test of *Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976). The **Humphries** argue that the stigma of being listed in the **CACI** as substantiated child abusers, *plus* the various statutory consequences of being listed on the **CACI** constitutes a liberty interest, of which they may not be deprived without process of law. We agree.^{FN11}

FN11. The **Humphries** also argue that they have a protected liberty interest created by the mandatory language in CANRA; a protected liberty interest in informational and familial privacy arising under the California Constitution, *see Burt v. County of Orange*, 120 Cal.App.4th 273, 15 Cal.Rptr.3d 373, 381-82 (2004); a protected liberty interest in familial privacy and autonomy under the federal constitution; and a protected liberty interest created by the sealing orders and California Penal Code § 851.8. Because we hold that the **Humphries** have been deprived of due process of law, and because it is not evident they would be entitled to any greater process or remedy if they successfully pressed these remaining liberty interests, we will not reach the merits of these arguments. We also decline to reach the **Humphries**’ ill-developed claims to substantive due process based on a right of parents with children to live without unwarranted government interference and the Appellees’ conduct relating to the sealing orders. Moreover, it is quite apparent to us that the same qualified immunity analysis would apply to the due process claims regardless of the underlying liberty interest asserted. Nevertheless, if the **Humphries** believe that these interests require a different due process or qualified immunity analysis than we have ordered here, they are free on remand to raise those claims before the district court and explain why the district court should address them.

[5] In *Wisconsin v. Constantineau*, the Supreme Court held that a liberty interest may be implicated “where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him.” 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971). The following year the Court stated that a government employee’s liberty interest would be implicated if he were dismissed based on charges that “imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities.” *Board of Regents v. Roth*, 408 U.S. 564, 573, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). In *Paul v. Davis*, the Supreme Court clarified that procedural due process protec-

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tions apply to reputational harm only when a plaintiff suffers stigma from governmental action plus alteration or extinguishment of “a right or status previously recognized by state law.” 424 U.S. 693, 711, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976). This holding has come to be known as the “stigma-plus test.” See Hart v. Parks, 450 F.3d 1059, 1070 (9th Cir.2006).

***1186 a. Stigma**

[6] As the district court found, being labeled a child abuser by being placed on the CACI is “unquestionably stigmatizing.” We have observed that there is “[n]o doubt ... that being falsely named as a suspected child abuser on an official government index is defamatory.” Miller v. California, 355 F.3d 1172, 1178 (9th Cir.2004); see also Valmonte v. Bane, 18 F.3d 992, 1000 (2d Cir.1994) (finding it beyond dispute that inclusion on a child abuse registry damages reputation by “branding” an individual as a child abuser). Indeed, “no conduct so unequivocally violates American ethics as ... sexual predation upon the most vulnerable members of our society.” Nicanor-Romero v. Mukasey, 523 F.3d 992, 999 (9th Cir.2008) (citation omitted). The horror deepens when such abuse occurs at the hands of the parents, who have an obligation to protect their children. See id. at 1013 (Bybee, J., dissenting) (“Our recognition that the victim's vulnerability or intimate relationship with her victimizer can render an act inherently base or vile simply reflects contemporary American mores.”).

The Court has identified stigma on the basis of lesser accusations. In Constantineau, the chief of police had posted the plaintiff's name on a list that prohibited her from purchasing alcohol pursuant to a state statute forbidding the sale of alcoholic beverages to persons who had become hazardous by reasons of their “excessive drinking.” 400 U.S. at 434-35, 91 S.Ct. 507. In Paul, the plaintiff's picture appeared on a flyer of individuals who were suspected of shoplifting. 424 U.S. at 695, 96 S.Ct. 1155. In both cases the Court found stigma. Constantineau, 400 U.S. at 435-37, 91 S.Ct. 507; Paul, 424 U.S. at 697, 701, 96 S.Ct. 1155 (stating that imputing criminal behavior to an individual is generally considered “defamatory per se” and implicitly finding stigma by holding that stigma alone is insufficient). Being labeled a child abuser is indisputably more stigmatizing than being labeled an

excessive drinker or a shoplifter. Indeed, to be accused of child abuse may be our generation's contribution to defamation per se, a kind of moral leprosy.

b. Plus

The more difficult issue is whether the **Humphries** can satisfy the “plus” test. The **Humphries** must show that, as the result of being listed in the CACI, “a right or status previously recognized by state law was distinctly altered or extinguished.” Paul, 424 U.S. at 711, 96 S.Ct. 1155; see also Siegert v. Gilley, 500 U.S. 226, 233, 111 S.Ct. 1789, 114 L.Ed.2d 277 (1991) (reaffirming that an injury to reputation by itself is not a protected liberty interest under the Fourteenth Amendment).

As the Court explained in Paul, when the chief of police in Constantineau posted the plaintiff's name on a list forbidding the sale of alcohol to her, it “significantly altered her status as a matter of state law” by depriving her “of a right previously held under state law[-]the right to purchase or obtain liquor in common with the rest of the citizenry.” Paul, 424 U.S. at 708, 96 S.Ct. 1155. The Court concluded that “it was that alteration of legal status which, combined with the injury resulting from the defamation, justified the invocation of procedural safeguards.” Id. at 708-09, 96 S.Ct. 1155.

In Paul itself, the Louisville Chief of Police placed Davis' name on a flyer distributed to Louisville merchants containing a list of individuals thought to be active in shoplifting. Id. at 695, 96 S.Ct. 1155. In contrast to the mandatory nature of the statute in Constantineau, the flyer merely “came to the attention” of Davis' supervisor who warned him not to repeat his ***1187** actions in the future. Id. at 696, 96 S.Ct. 1155. The Court found that this harm to Davis' reputation was not sufficient to create a liberty interest. Id. at 712, 96 S.Ct. 1155. Notably, no law had required the Chief of Police to distribute this flyer, nor did any law require employers to check the list. Thus, although any impairment to Davis' employment opportunities “flow[ed] from the flyer in question,” his injury only occurred because the flyer happened to have “[c]ome to the attention of [his] supervisor.” Id. at 696-97, 96 S.Ct. 1155.

As a preliminary matter, the Appellees contend that

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the **Humphries'** attempt to satisfy the “plus” test is foreclosed by our decision in Miller v. California, 355 F.3d 1172 (9th Cir.2004). In Miller, we confronted different questions concerning the rights of grandparents listed on the CACI. The Millers' three grandchildren had been removed from their parents' home, and the Millers were eventually named the children's guardians. Id. at 1173-75. In the meantime, as a result of a doctor's concern about possible sexual abuse, Charles Miller's name was listed on the CACI. Id. at 1174-75. The Millers brought suit to clear their names and argued that county employees, by placing Charles Miller's name on the CACI, had conspired to deprive them of a liberty interest to associate with their grandchildren. Id. at 1173-74. We held that the Millers had no “substantive due process right to family integrity or association as noncustodial grandparents of children who are dependents of the court, nor of a liberty interest in visiting their grandchildren.” Id. at 1176.

In a separate argument, Charles Miller argued that he had suffered a stigma-plus injury to his reputation and had been denied an opportunity to be heard on the deprivation. Id. at 1177. We concluded that Miller had shown injury to his reputation, but could not establish the “plus” because he was “not legally disabled by the listing [on the CACI] alone from doing anything they otherwise could do.” Id. at 1179. As we observed, the Millers were in fact awarded guardianship of their grandchildren after Charles' name had been placed on the CACI. The only “plus” alleged in Miller was a fundamental liberty interest in preserving family association. Id. at 1178. We held that because grandparents have no constitutionally protected liberty interest in a relationship with their grandchildren, the Millers could not allege “plus” on those grounds. Id.

Significantly, we expressly declined to address whether the mere presence of Miller's name on the CACI denied him due process “because CANRA provides no procedure by which those suspected of being child abusers can challenge the allegations against them.” Id. at 1179 n. 4. The argument had not been properly presented to the district court and was not properly before us. We also did not address whether requiring agencies to search the CACI prior to issuing a license constitutes a viable “plus.” We now take the opportunity to address these issues left open in Miller.

[7] The **Humphries** allege more than mere reputational harm-being listed on the CACI alters their rights in two general ways. First, state statutes mandate that licensing agencies search the CACI and conduct an additional investigation prior to granting a number of rights and benefits. These rights include gaining approval to care for children in a day care center or home, CAL. HEALTH & SAFETY CODE § 1596.877(b), obtaining a license or employment in child care, id. § 1522.1(a), volunteering in a crisis nursery, id. § 1526.8(b)(2), receiving placement or custody of a relative's child, CAL. WELF. & INST. CODE § 361.4(c), or qualifying as a resource family, id. § 16519.5(d)(1)(A)(i). These benefits are explicitly conditioned *1188 on the agency checking the CACI and conducting an additional investigation. Second, information in the CACI is specifically made available to other identified agencies: state contracted licensing agencies overseeing employment positions dealing with children, CAL. PENAL CODE § 11170(b)(4); persons making pre-employment investigations for “peace officers, child care licensing or employment, adoption, or child placement,” id. § 11170(b)(8); individuals in the Court Appointed Special Advocate program conducting background investigations for potential Court Appointed Special Advocates, id. § 11170(b)(5), and out-of-state agencies making foster care or adoptive decisions, id. § 11170(e)(1). Although these agencies are not explicitly required by CANRA to consult the CACI, they may, as a practical matter, be required to do so by their own regulations or practices, as discussed below. Thus, inclusion in the CACI alters the **Humphries'** legal rights or status in a variety of ways that Californians who are not listed on the CACI are not subject to: applying for custody of a relative's child, becoming guardians or adoptive parents (inside or outside of California), obtaining a license for child care, becoming licensed or employed in a position dealing with children, obtaining employment as a peace-officer, and involvement in adoption and child placement. We have mentioned, and the district court found, that the **Humphries** were directly affected in their eligibility to work or volunteer at a local community center. The **Humphries** also introduced evidence indicating that Wendy was affected in her ability to renew her teaching credentials.

We recognize that being listed on the CACI may not fully extinguish the **Humphries'** rights or status.

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Agencies that obtain information from the CACI are responsible for “drawing independent conclusions regarding the quality of the evidence disclosed.” *Id.* § 11170(b)(9)(A). Thus, for example, inclusion on the CACI does not necessarily bar the **Humphries** from obtaining a license for child care, but it does guarantee that the licensing entity will conduct an investigation anew before issuing or denying the license. However, we need not find that an agency will necessarily deny the **Humphries** a license to satisfy the “plus” test. Outright denial would mean that a listing on the CACI has extinguished the **Humphries**’ legal right or status. Rather, *Paul* provides that stigma-plus applies when a right or status is “altered or extinguished.” 424 U.S. at 711, 96 S.Ct. 1155 (emphasis added).

[8] We hold that where a state statute creates both a stigma and a tangible burden on an individual’s ability to obtain a right or status recognized by state law, an individual’s liberty interest has been violated. A tangible burden exists in this context where a law effectively requires agencies to check a stigmatizing list and investigate any adverse information prior to conferring a legal right or benefit. As outlined above, California created the CACI via CANRA and explicitly requires agencies to consult the CACI and perform an independent investigation before granting a number of licenses and benefits. This requirement places a tangible burden on a legal right that satisfies the “plus” test.

We find that a tangible burden also exists where the plaintiff can show that, as a practical matter, the law creates a framework under which agencies reflexively check the stigmatizing listing—whether by internal regulation or custom—prior to conferring a legal right or benefit. CANRA appears to create such a legal framework. CANRA explicitly provides that a variety of agencies will have access to the CACI, and we cannot turn a blind eye to *1189 the actions of these other agencies merely because they are not explicitly required by statute to receive CACI information.

The record before us on this latter point is admittedly sparse. Nevertheless, as a practical matter, it is difficult to imagine that an agency charged with protecting California’s children—through granting or denying licenses to work in child care, allowing people to engage in adoption or child-placement services, or

considering potential Court Appointed Special Advocates—would fail to consult the CACI. There is possibly no information more relevant to determining whether a person should be permitted to have a license to work or care for children than whether that person has abused an innocent child in the past. As Bernice Williams, the Human Resources Manager at the Florence Crittenton Center in Los Angeles stated in her affidavit, “Before any adult is cleared to teach at our school, to work at our day care center, or to work or volunteer anywhere within our facility, he or she must undergo Livescan screening, including a [CA DOJ CACI] check.” We would be surprised to hear anything differently from other agencies or entities responsible for providing for the safety and education of children. Indeed, on top of the need to protect California’s youth, hiring or giving a license to someone without checking the CACI could potentially lead to tort liability under California law. *See Juarez v. Boy Scouts of Am., Inc.*, 81 Cal.App.4th 377, 97 Cal.Rptr.2d 12, 24-25 (2000) (“[I]n California, an employer can be held liable for negligent hiring if he knows the employee is unfit, or has reason to believe the employee is unfit or fails to use reasonable care to discover the employee’s unfitness before hiring him. [T]he theory of negligent hiring here encompasses the *particular risk of molestation by an employee with a history of this specific conduct.*”) (internal citations and quotations omitted). Once an agency consults the CACI and finds adverse information, CANRA requires the agency to conduct an investigation and come to its own conclusion. CAL. PENAL CODE § 11170(b)(9)(A)

Viewing the evidence in the light most favorable to the **Humphries**, we conclude that California has implemented a system whereby the CACI is reflexively consulted prior to the conferral of legal rights or benefits under California law, even where the statute does not necessarily require agencies to check the list on its face. The CANRA both stigmatizes the **Humphries** and creates an impediment to the **Humphries**’ ability to obtain legal rights. The **Humphries** have asserted the existence of a sufficient liberty interest under the stigma-plus test, of which they may not be deprived without due process of law.

Our holding is consistent with *Paul*. In *Paul*, the Court was concerned that every insult by a police officer might create a due process right and turn the

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Fourteenth Amendment into “a font of tort law to be superimposed upon whatever systems may already be administered by the States.” 424 U.S. at 701, 96 S.Ct. 1155. This concern that “a hearing would be required each time the State in its capacity as employer might be considered responsible for a statement defaming an employee who continues to be an employee,” *id.* at 710, 96 S.Ct. 1155, is not triggered here. Our decision is limited to those “stigma-plus” situations where both the defamatory statement and the tangible burden on a legal right are statutorily created. In *Paul*, individual officers independently chose to distribute a leaflet, and the stigmatizing language in the leaflet just happened to come to the attention of the plaintiff’s private supervisor. In contrast, the burdens on the **Humphries’** abilities to obtain various licenses and other legal rights from the state of California are the *1190 result of state statutes creating the CACI, instructing state officers to put certain information on the CACI, and effectively mandating that various entities consult the CACI. The CACI is not just haphazard, second-hand information that happens to reach the ears of an employer. This case does not resemble the sort of state-court tort case that *Paul* feared.

In reaching this holding, we find the Second Circuit’s reasoning in *Valmonte v. Bane* persuasive. 18 F.3d 992 (2d Cir.1994). In *Valmonte*, the Second Circuit heard a challenge to the New York Central Register of Child Abuse and Maltreatment. Under the New York scheme, the Department of Social Services determined whether an allegation of child abuse was “indicated” or “unfounded.” *Id.* at 995. If there was “some credible evidence” supporting a complaint, the report was deemed “indicated” and went into the Central Register; otherwise, it was deemed “unfounded,” expunged from the Central Register, and destroyed. *Id.* As in California, state agencies, private businesses, and licensing agencies were required to check whether potential employees or applicants were on the Central Register. *Id.* The agency or business could hire the person only if the employer maintained a written record explaining why the person was suitable for employment or a license. *Id.* at 996. The court found that because agencies and employers would learn of Valmonte’s inclusion on the Central Register “by operation of law ... and ... likely ... will choose not to hire her due to her status” the New York scheme “[did] not simply defame Valmonte, it place[d] a tangible burden on her employment prospects.”

Id. at 999, 1001. The Second Circuit explained that “[t]his is not just the intangible deleterious effect that flows from a bad reputation. Rather, it is a specific deprivation of her opportunity to seek employment caused by a statutory impediment established by the state.” *Id.* at 1001. *Valmonte* stands for the proposition that to satisfy stigma-plus, a child abuse registry does not need to create a per se bar to employment; it is sufficient that a child abuse registry, by operation of law, creates a “statutory impediment” or a “tangible burden” to being hired. *Id.* at 1001-02. See also *Dupuy v. Samuels*, 397 F.3d 493, 503-04, 509-11 (7th Cir.2005) (finding that where “child care workers effectively are barred from future employment in the child care field once an indicated finding of child abuse or neglect against them is disclosed to, and used by, licensing agencies” a protected liberty interest is “squarely implicate[d]” under *Paul*).

Appellees argue that the CACI differs from the statute in *Valmonte*, because there is no requirement in California that an agency maintain a written record explaining why the person was suitable for employment or other government right. We disagree. The CACI requires agencies to undergo the same investigation to independently establish eligibility for a government benefit. The mere fact that agencies in California are not required to write anything down does not place any less of a burden on the **Humphries’** ability to obtain employment, a license, or custody than Valmonte experienced under the New York statute.

[9] We emphasize that an injury that results merely from simple defamation is not a constitutional liberty interest under the “stigma-plus” test. *Siebert v. Gilley*, 500 U.S. 226, 233-34, 111 S.Ct. 1789, 114 L.Ed.2d 277 (1991). Employment, licensing, custody, or other legal rights under California law are not refused merely because of the deleterious effect of a bad reputation. By operation of law, California has effectively required agencies to consult the CACI, agencies will have to *1191 conduct an additional investigation to determine if the **Humphries** should be eligible for a government benefit, and those agencies will therefore be more hesitant to issue that benefit. As in *Valmonte*, the **Humphries** will not lose these benefits based merely on their reputation, these benefits “will be refused ... simply because [their] inclusion on the list results in an added burden on

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employers who will therefore be reluctant to hire [them].” 18 F.3d at 1001.

We note that the Eleventh Circuit, in *Smith v. Siegelman*, denied a stigma-plus claim where the plaintiff was designated a child sexual abuser and placed on Alabama’s Central Registry on Child Abuse and Neglect. 322 F.3d 1290, 1296-98 (11th Cir.2003). We think *Smith* rests on a different footing. It appears that Alabama did not mandate that potential employers consult the Registry; rather, “the information on the Registry is made available to an employer or potential employer where the employment involves care or supervision of children.” *Id.* at 1297; see also ALA. CODE § 26-14-8(d) (providing that the information in the registry “may be made available” to employers).^{FN12} Accordingly, the Eleventh Circuit held that the Alabama scheme was governed by *Paul* because the plaintiff “was [not] denied any right or status other than his not being branded a child sexual abuser.” *Id.* at 1297. As we have explained, the CACI is more than a registry that an employer “may” consult. By law, licensing agencies must consult the CACI, investigate, and use the CACI information in making their licensing decisions, see, e.g., CAL. HEALTH & SAFETY CODE §§ 1522.1(a), 1526.8(b)(2), 1596.877(b). The CACI is much closer to the New York Central Register than the Alabama Registry. See *Valmonte*, 18 F.3d at 1002 (explaining that “the injury associated with the [New York] Central Register is not simply that it exists, or that the list is available to potential employers” but rather that “employers must consult the list.”).

^{FN12}. Our understanding is that Alabama did not require employers to consult the Alabama registry, and therefore that *Siegelman* is closer to *Paul* than our case. If Alabama did require employers to consult the Alabama Registry and conduct further investigation, then we respectfully disagree with the Eleventh Circuit’s holding that there is no “plus.” Such a holding would fail to recognize that in *Paul* the reputational damage occurred inadvertently, and not as the result of a statutory mandate.

In addition, the Eleventh Circuit either did not have evidence of or did not consider the possibility that as a result of the statutory framework other entities were

effectively required to consult the registry as a matter of internal rule or custom. To the extent that the Eleventh Circuit refuses to recognize a liberty interest where the state functionally requires agencies to consult a stigmatizing list prior to conferring a government benefit, we must disagree. A state can alter a legal right or status without using the word “must”—the word “may” in conjunction with a rule or custom of “must” can equally deprive a citizen of a liberty interest giving rise to a procedural due process claim.

Thus, we conclude that the **Humphries**’ legal rights or status have been altered. First, California has explicitly required some agencies to search a stigmatizing listing and conduct an additional investigation before issuing a license or benefit under state law. Second, California has made CACI information available to a variety of other agencies, and the **Humphries** have introduced evidence that those agencies—especially agencies charged with ensuring the safety and well-being of children—reflexively check the CACI before issuing a government license or benefit. *1192 Thus, being listed on the CACI places an added burden on entities wishing to confer legal rights or benefits, makes the chances of receiving a benefit conferred under California law less likely, and practically guarantees that conferral of that benefit will be delayed. Accordingly, we hold that the **Humphries** have satisfied the first step of the procedural due process analysis: They have a liberty interest in both their good name and using it to obtain a license, secure employment, become guardians, volunteer or work for CASA, or adopt. Listing the **Humphries** on the CACI places a tangible burden on their ability to exercise this liberty interest. We proceed to consider whether they have been deprived of this interest without due process of law.

2. Adequacy of the Procedural Safeguards

The **Humphries** must show that the procedural safeguards of their liberty interest established by the state are constitutionally insufficient to protect their rights. *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989). California currently provides some minimal safeguards against erroneously listing someone on the CACI. In the first place, a reporting agency must conduct “an active investigation and determine[] that the report is not unfounded.” CAL. PENAL CODE § 11169(a). Once

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the agency creates the report and forwards it to the CA DOJ, if a report “subsequently proves to be unfounded” the CA DOJ has a duty to “not retain the report.” *Id.* Although this entire process is spelled out in the passive voice, it appears that the agency has the duty to correct its files and thus to decide if they are unfounded. *See id.* § 11170(a)(2) (“The submitting agencies are responsible for the accuracy, completeness, and retention of the reports.”). CANRA also provides that the CACI “shall be continually updated by the [CA DOJ] and shall not contain any reports that are determined to be unfounded.” CAL. PENAL CODE § 11170(a)(1). Once a report has been made to the CA DOJ and an entry made on the CACI, “the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the [CACI].” *Id.* § 11169(b).

A person who believes he has been wrongfully listed on the CACI has two possible remedies under CANRA. First, a listed person might try to get the agency who originally reported the information to the CACI to correct its reports. As noted above, it appears that California agencies have a general duty to maintain accurate records and to advise CA DOJ of any report that subsequently proves unfounded. CAL. PENAL CODE §§ 11169(a), 11170(a)(1). CANRA does not identify how an agency is to ensure that it has accurate records or who is responsible for correcting any errors. The CA DOJ’s responsibility is limited to ensuring that the CACI “accurately reflects the report it receives from the submitting agency”—it does not appear to have any duty to ensure the accuracy of the report itself. *Id.* § 11170(a)(2); CAL. CODE REGS. tit. 11, § 904 (2008) (stating that the CA DOJ “presumes that the substance of the information provided is accurate and does not conduct a separate investigation to verify the accuracy of the investigation conducted by the submitting agency”). At best, CANRA implies that reports are subject to correction “by the investigator who conducted the investigation.” *Id.* § 11165.12. However, California provides no formal mechanism for requesting that an investigator review a report or for appealing an investigator’s refusal to revisit a prior report. Thus, for this first avenue of obtaining relief, at best an informal process exists in which the person seeking review *1193 must contact the agency blindly and hope the investigator is responsive. It is not clear what a person seeking review is to do if the investigator has transferred from the agency, retired, or died.

Second, the person may rely on a licensing or employing agency to conduct its own investigation and to “draw[] independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.” *Id.* § 11170(b)(9)(A). Indeed, no particular process is required prior to the agency “drawing independent conclusions.” Unless the agency unilaterally undertakes its own detailed investigation, it may only perpetuate any errors contained in the original report, even as it draws its own “independent conclusions.” In addition, even if the agency has the time, funding, and resources to determine that the evidence contained in the CACI is erroneous or unfounded, it does not have power to expunge the listing.^{FN13} Thus, in the best case scenario for an innocent person placed on the CACI, the only remedy under this avenue for relief is that the agency might still confer the government benefit after taking the time to conduct an added background investigation. The CACI listing, however, remains.

FN13. In most instances, California provides no formal means for reviewing or appealing an agency’s independent determination. As we discuss in greater detail below, denial of a right by DSS may be subject to judicial review. CAL. HEALTH & SAFETY CODE § 1526; CAL. FAMILY CODE § 8720.

[10] We evaluate the process that California provides persons listed on the CACI under the three part test set out in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *Mathews* instructs us to balance (1) the private interest affected by the official action; (2) the risk of erroneous deprivation and the probable value of additional procedural safeguards; and (3) the governmental interest, including the fiscal and administrative burdens of additional procedures. *Id.* The procedural due process inquiry is made “case-by-case based on the total circumstances.” *California ex rel. Lockyer v. F.E.R.C.*, 329 F.3d 700, 711 (9th Cir.2003). We will consider the private and governmental interests first, followed by a discussion of the risk of error in the procedures established by the state.

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a. Private Interest

The **Humphries'** argument in support of their private interest at stake is essentially coextensive with their argument in support of their liberty interest. From all we have said, the **Humphries** have an interest in not being stigmatized by having their names included in a child abuse database that places a tangible burden on legal rights, if they have not committed the acts underlying the reports that led to their inclusion. Thus, they have an interest in pursuing employment and adoption, seeking to obtain custody of a relative's children, and securing the appropriate licenses for working with children without having to be subject to an additional investigation, delays, and possible denial of a benefit under California law due to an incorrect listing on the **CACI**.

b. Governmental Interest

[11] There is no doubt that California has a vital interest in preventing child abuse and that the creation or maintenance of a central index, such as the **CACI**, is an effective and responsible means for California to secure its interest. See *1194 Santosky v. Kramer, 455 U.S. 745, 766, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); People v. Stockton Pregnancy Control Med. Clinic, 203 Cal.App.3d 225, 249 Cal.Rptr. 762, 772 (1988) (finding the goals of detecting and preventing child abuse are a "compelling" government interest). Nevertheless, the operative question is not whether California has a significant interest in maintaining **CACI**-no one doubts that it does-but rather whether California has a significant interest in having a limited process by which an individual can challenge inclusion on the **CACI**, and to what extent adding additional processes will interfere with the overarching interest in protecting children from abuse.

We do not question, for example, that California has a significant interest in maintaining even "inconclusive" reports, which are reports that are neither "substantiated" nor "un-founded." See CAL. PENAL CODE §§ 11165.12, 11169(a). Such reports that only hint at abuse, when coupled with other information, can reveal patterns that might not otherwise be detected and can be useful to law enforcement. But it is equally apparent that California can have no interest in maintaining a system of records that contains incorrect or even false information. First, the effective-

ness of a system listing individuals that pose a danger to children becomes less effective if a larger and larger percentage of the population erroneously becomes listed due to unsubstantiated claims. To clarify our point through an extreme example, it is obvious that if one hundred percent of the population were erroneously included in the **CACI**, it would provide no benefit to California in identifying dangerous individuals. Thus, the more false information included in a listing index such as the **CACI**, the less useful it becomes as an effective tool for protecting children from child abuse. In addition, there is a great human cost in California, as elsewhere, to being falsely accused of being a child abuser. These costs are not only borne by the individuals falsely accused, but by their children and extended families, their neighbors and their employers. Indeed, with the same passion that California condemns the child abuser for his atrocious acts, it has an interest in protecting its citizens against such calumny.

California contends that requiring any process beyond what it currently provides will substantially impair the state's ability to protect children because hearings are time-consuming and drain limited resources, resulting in less efficient delivery of primary services such as protecting children. It is true, of course, that giving individuals some additional procedure by which they can challenge their listing on **CACI** will impose administrative and fiscal burdens on California. However, generally these burdens are precisely the sort of administrative costs that we expect our government to shoulder. The state has not provided any evidence that the process required to sort through claims of an erroneous listing in the **CACI** is any more burdensome than the process due in any other context.

c. Risk of Erroneous Deprivation

[12] The final, and perhaps most important, *Mathews* factor is the risk of erroneous deprivation and the probable value of additional procedural safeguards. As we evaluate this factor, we ask "considering the current process, what is the chance the state will make a mistake?" In this case, we ask, "after examining the process by which persons are listed on the **CACI**, what is the risk of someone being erroneously listed?" In light of the **Humphries'** allegations-and keeping in mind that we are reviewing a grant of

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summary judgment in favor of the state—the answer is “quite likely.”

*1195 Appellees argue that the current procedures present little risk of erroneous deprivation because an agency may transmit a child abuse report only after it “has conducted an active investigation and determined that the report is not unfounded.” CAL. PENAL CODE § 11169(a). We are not assuaged. A determination that the report is “not unfounded” is a very low threshold. As we explained above, CANRA defines an “unfounded report” as a report that the investigator determines “to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect.” CAL. PENAL CODE § 11165.12(a). Effectively, a determination that a report is “not unfounded” merely means that the investigator could not affirmatively say that the report is “false.” This is the reverse of the presumption of innocence in our criminal justice system: the accused is presumed to be a child abuser and listed in CANRA unless the investigator determines that the report is false, improbable, or accidental. Incomplete or inadequate investigations must be reported for listing on the CACI.

We have no evidence in the record that indicates exactly how many “false positives” reporting agencies receive. See *Broam v. Bogan*, 320 F.3d 1023, 1032 (9th Cir.2003); see also *Kennedy v. Louisiana*, --- U.S. ---, 128 S.Ct. 2641, 2663, 171 L.Ed.2d 525 (2008) (noting “[t]he problem of unreliable, induced, and even imagined child testimony”). However, given the high stakes in child abuse cases, presumably an agency investigation and child abuse report can be triggered by as little as an anonymous phone call. It is apparent in such a system there is a real danger of prank and spite calls. California should investigate such reports, and it can—and perhaps should—retain records on any reports it cannot determine to be “unfounded.” When it retains all reports that are “not unfounded,” it assumes a substantial risk that some of its reports are false, even if the investigator cannot prove to his own satisfaction that they are “unfounded.” We understand the need for investigators who work off of hunches, disparate patterns, and minute clues to maintain files on unsubstantiated reports of child abuse for their own investigative purposes. But when such reports find their way into the CACI, there is a real risk that people, like the *Humphries*, will have to explain publicly how their

names ended up on the state's child abuse database.

The record is devoid of any systematic study of the error rate in the CACI. We do note that in a 2004 self-study of CANRA, a California task force reported on a pilot program in San Diego County, where “DOJ discovered that approximately 50 percent of CACI listings originating from [one agency] should be purged because the supporting documentation was no longer maintained at the local level.” *Child Abuse and Neglect Reporting Act Task Force Report 24* (2004). The task force found that “[if] this percentage held true for the entire State it is possible that half of the 800,000 records which DOJ presently maintains in CACI should be purged.” *Id.* We will not infer too much from this limited study, except to remark that it confirms our own observations about the low threshold for putting names on the CACI and the tendency to overinclude. As an initial matter then, we conclude that there is a substantial risk that California will deprive innocent persons of their “reputation-plus” by maintaining files on them in the CACI.

Any errors introduced at the time information is posted to the CACI arguably can be corrected. As we have noted, once the information is posted, the CA DOJ must notify the known or suspected child abuser that he has been reported to the CACI. CAL. PENAL CODE § 11169(b). At that *1196 point, if the person believes he has been reported in error, he has three options. First, he can try to informally persuade the investigator who reported it in the first place. Second, he can wait until an agency or other entity that is required to consult the CACI receives the information and rely on the agency or other entity’s “independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions.” *Id.* § 11170(b)(9)(A). Third, once an agency makes an adverse decision, some persons have a right to appeal the decision in court. See, e.g., CAL. HEALTH & SAFETY CODE § 1526 (providing a hearing after the denial of a license); CAL. FAMILY CODE § 8720 (providing for judicial review of an adoption denial).

None of these means for correcting erroneous information in the CACI is well designed to do so. We consider each in turn.

[13] 1. *Persuading the investigator*. First, attempting

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to persuade the investigating officer is not a satisfactory way to correct the records. The **Humphries** received notice that their names had been referred to the **CACI**. They were not told what information was there—although, given their recent experience, they had a pretty good idea—and were told, “If you believe the report is unfounded ... please address your request to Detective M. Wilson.” In other words, the only recourse offered to the **Humphries** was to try to get the investigator who had made the original determination that their case was “substantiated” to change his mind. Nothing in CANRA instructs Detective Wilson how to deal with the **Humphries**.^{FN14} He is not required to respond to the **Humphries** or address their concerns or pleas in any way, he has been given no standard for reevaluating his initial judgment, and no one else other than Detective Wilson is required to respond to the **Humphries**. If Detective Wilson refuses to reconsider his original evaluation, the **Humphries** have no statutory recourse elsewhere within the LASD.

^{FN14}. Detective Wilson had actually left the department before the **Humphries** could petition him to revisit his decision. We refer to Detective Wilson in our analysis here as a surrogate for the investigating officer under the statutory scheme to show the limitations in the process afforded by CANRA.

The **Humphries** are in a tough position. They are not the only ones. Under the California scheme, Detective Wilson has been placed in a difficult situation, because he has been asked to revisit his initial judgment. Detective Wilson is, by training and employment, an investigator, not an adjudicator. That is not to say that investigators do not have to make important judgments; they do, but these judgments are subject to review, and Detective Wilson has none of the usual checks and balances to rely on. In the course of a criminal investigation, he may have his work reviewed by a superior within the LASD, or the District Attorney's office may review his judgment to decide whether to file formal charges. However, these reviews are likely to take place before any information is posted to the **CACI** and would have no effect on any review Wilson would undertake at the **Humphries'** request.^{FN15} Effectively, Detective Wilson has *1197 been tasked with being investigator, prosecutor, judge, and jury with respect to the **Humphries'** **CACI** listing. He alone makes the initial judgment to

place the **Humphries** on the **CACI**, with all of its legal consequences. Moreover, his judgment is apparently unreviewable except by himself. Since CANRA does not provide for formal review of a **CACI** listing, it also means that there are no standards for an investigator to review his prior decisions. Under such circumstances—where there is no standard, no superior outlet for review, and thus no danger of being overturned—it is unlikely that an investigator will, in effect, reverse himself. Any errors made in the initial referral to the **CACI** are, therefore, likely to be perpetuated through an informal appeal.

^{FN15}. This is demonstrated clearly in the **Humphries'** case. Although the **Humphries** had been booked on felony torture, the district attorney rejected the attempt to file a felony action against them, and only allowed the case to be filed for misdemeanor consideration. The district attorney then dismissed the remainder of the **Humphries'** case after learning of Dr. Paz's examinations of S.H.'s entire body with no sign of abuse. Nevertheless, this district attorney “review” of Detective Wilson's judgment had no effect on the **Humphries'** **CACI** listing.

The California system asks too much of its investigators in this situation. The Due Process Clause does not impose the separation of powers on the state or local governments. See *Colo. Gen. Assembly v. Salazar*, 541 U.S. 1093, 1095, 124 S.Ct. 2228, 159 L.Ed.2d 260 (2004) (Rehnquist, C.J., dissenting from denial of certiorari); *Whalen v. United States*, 445 U.S. 684, 689 n. 4, 100 S.Ct. 1432, 63 L.Ed.2d 715 (1980). But the Due Process Clause may demand a separation of functions. See, e.g., *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). The burden on the **Humphries** is a heavy one:

The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative

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powers on the same individuals poses such a risk of actual bias of prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

Id. Nevertheless, we think the burden has been met in this case, particularly when we consider the risk of erroneous deprivation in light of the interests of those whose names are placed on the CACI. We do not question the honesty and integrity of officials such as Detective Wilson. We simply believe that in this context, CANRA asks more of a state or local official than is reasonable.

We wish to be clear: We do not adopt the proposition that “agency members who participate in an investigation are disqualified from adjudicating.” *Id.* at 52, 95 S.Ct. 1456. Such a proposition is belied by the cases and the “incredible variety of administrative mechanisms in this country.” *Id.* Rather, we hold that a single person, charged with investigating serious allegations of child abuse, may not adjudicate those allegations for placement on the CACI and serve as appellate commissioner in review of his own decision. The risk of perpetuating any original error is too great.

[14] 2. *Reaching an independent agency conclusion.* Appellees also argue that there is little risk of erroneous deprivation because an agency that has consulted the CACI must base its decision regarding the listed person on its own “independent conclusions.” CAL. PENAL CODE § 11170(b)(9)(A). Furthermore, California regulations make it “the responsibility of authorized individuals or entities to obtain and review the underlying investigative report and make their own assessment of the merits of the child abuse report.” CAL. CODE REGS. tit. 11, § 902 (2008). The decision maker “shall *1198 not act solely upon [CACI] information.” *Id.*

First, we note that by the time the decision maker has referenced the CACI and become charged with undertaking an additional investigation, the individual liberty interest in avoiding stigma and alteration of a legal right has already occurred. Of course, the Due Process Clause does not always require the state to offer process to a person prior to the deprivation of a liberty interest, see *Gilbert v. Homar*, 520 U.S. 924, 930, 117 S.Ct. 1807, 138 L.Ed.2d 120 (1997), but we

note for purposes of determining the adequacy of the process offered by Appellees—additional investigation of a CACI listing to determine if a person should receive a government benefit—is the very type of interference with a liberty interest that an innocent person listed on the CACI seeks to avoid.

Second, even if the agency conducts a thorough investigation, nothing the agency decides affects the CACI listing; that is, even if an agency, conducting its own investigation, decides that the claims against a listed person are unfounded, the agency has no power to correct the CACI listing. The person is stuck in CACI-limbo. Thus, the process proffered by Appellees fails to address the stigma of being listed on the CACI and resolve the fact that other agencies will still be forced to consult the CACI to confer other benefits under the law.

Disregarding these limitations temporarily, it is not clear to us that an agency, in reality, can or will regularly engage in the process required to determine that charges against an individual are unfounded. As a practical matter, when a person's name appears on the CACI, the agency must take that fact seriously and presume that the person has committed some kind of child abuse, even if there is no record of conviction. For example, before issuing a license for child care, we cannot imagine that an agency would issue the license to a person listed on the CACI—if it considers doing so at all—without undertaking an investigation to disprove whatever evidence existed that caused the person to be listed in the first place. To restate it in CANRA's own terms, the agency must satisfy itself that information that was “not unfounded” is “unfounded.” The agency must be prepared to contradict the investigating agency.

The older the evidence, or the more involved the allegations, the more expensive it will be for the agency to disprove the allegations. We are not unfamiliar with the budgetary and time constraints that hamper government agencies. An agency with a limited budget, presented with the choice of thoroughly investigating allegations of child abuse so that it can issue a license, or simply denying the license after a cursory investigation so that it can spend its resources elsewhere, can reasonably be expected to choose the latter. We do not mean to imply that California agencies will not behave honestly or forthrightly, but we

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cannot help but observe that such entities bear a substantial burden, embedded in CANRA, to justify issuing a license to a person listed on the CACI. In sum, any agency—and especially agencies that deal with children—are likely to presume the integrity of the information found on the CACI, assume that individuals listed on the CACI actually abused children, and deny the license rather than risk awarding, for example, a child care license to a listed individual.

This case illustrates these problems. The **Humphries** allege that they have been erroneously placed on the CACI. In order to clear their name from this stigma, they must apply for a legal right or benefit of the state and subject themselves to an additional investigation before that right *1199 or benefit will be conferred. If Craig or Wendy **Humphries** sought a license to care for children, the licensing agency would have to obtain and review the **Humphries'** 2001 “file prepared by the child protective agency which investigated the child abuse report.” CAL. HEALTH AND SAFETY CODE § 1522.1(a). That file contains Detective Wilson's conclusion that the **Humphries** were “substantiated” child abusers. In order to protect the children that the **Humphries** will deal with, the agency is going to start with the presumption that it must deny the license unless it finds evidence contrary to Detective Wilson's investigation. So far as we can determine, the **Humphries'** file does not include the result of the dependency proceeding (including the finding of “not true”), or information about the dropped criminal charges (including the finding of “factually innocent”). Faced with the cost and time of investigating seven-year old allegations, there is no reason to assume that any agency would attempt to track down this information on its own. In the **Humphries'** case, the existence of such court records, if they could get them before the licensing agency, might go a long way to rebutting the presumption. Other applicants, however, may not be so fortunate as to have faced formal proceedings and had the proceedings resolved so clearly in their favor. In the case of a person who is accused of child abuse, but never formally charged, the agency would have to reinvestigate the underlying allegations, possibly requiring the examination of witnesses in order to satisfy itself that the original charges were erroneous. In the end, the agency may do what Sergeant Becker did when asked to review Detective Wilson's file. He simply relied on the fact that charges were filed as evidence “that some sort of

crime did occur” and refused to give any weight to the fact that the charges were dismissed in court.

[15] 3. *Seeking court review.* Finally, Appellees argue that some persons adversely affected by decisions resulting from their listing on the CACI may seek redress in the legal system on a case-by-case basis. *See, e.g., CAL. HEALTH & SAFETY CODE § 1526* (providing a hearing after the denial of a license); CAL. FAMILY CODE § 8720 (providing for judicial review of an adoption denial). The administrative review process offers some check on the system. As we know from our own experience, court review of agency decisions can be a cumbersome process. What is most troubling about the states' argument, however, is that even court review cannot solve the problem. Even if an individual is ultimately successful and obtains, for example, a child-care license, the court's favorable disposition has no apparent impact on the individual's listing on the CACI. Thus, the judicial review afforded by the statute faces the same problem as the original agency determination: It cannot end the stigma or the tangible burden on government rights that an individual listed on the CACI faces.

Again, the **Humphries'** experience is instructive. The **Humphries** have taken advantage of every procedure available to them, including the California courts. They went to the dependency court, which found that the allegations were “not true” and returned their children to them. They went to the prosecutor, who dropped all the charges against them. They went to the criminal court, which declared them “factually innocent” and sealed their arrest records. None of this had any effect on their CACI listing. They will remain on the CACI until the investigating agency submits corrected information to the system. There is no effective procedure for the **Humphries** to challenge this listing, and no way for them to be removed from the listing. The **Humphries** have been *1200 given no opportunity to be heard on the CACI listing.

In sum, we are not persuaded that California has provided a sufficient process for ensuring that persons like the **Humphries** do not suffer the stigma of being labeled child abusers plus the loss of significant state benefits, such as child-care licenses or employment. The processes in place in California do not adequate-

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ly reduce the risk of error. In *Valmonte*, which we previously discussed, the New York Central Register had far more procedural protections than the CACI—including a hotline for addressing erroneous listings, a formal investigation procedure, and two administrative hearings on expungement—yet the Second Circuit found that there was a high risk of erroneous deprivation. 18 F.3d at 995-97, 1003-04. “The crux of the problem with the procedures,” according to the Second Circuit, was that New York’s “‘some credible evidence’ standard results in many individuals being placed on the list who do not belong there.” *Id.* at 1004. Again, unlike in California, in New York there was a detailed procedure for expungement from the list. *Id.* at 995-97. When the court looked at that procedure, it determined that seventy-five percent of those challenging their inclusion on the list were successful. *Id.* at 1003. This confirmed to the court that the original listing determination was suspect. *Id.* at 1003-04.

Here, we do not have comparable statistical data on the rate of error because California has no expungement procedure. However, California’s standard for referring names to the CACI—“not unfounded”—is, if anything, more encompassing than New York’s word formula—“some credible evidence.” Additionally, as we previously noted, even California has recognized, in its task force report, that it may have a high error rate on the CACI, perhaps as high as fifty percent. *Child Abuse and Neglect Reporting Act Task Force Report* at 24. We acknowledge that this figure is not necessarily statistically significant, and we will not treat it as such; however, it does serve as a general indication that a large percentage of the individuals listed on the CACI might have a legitimate basis for expungement. If we can learn any lesson from New York’s experience, it is that California’s CACI has the potential to be overinclusive, and perhaps vastly so. We note that as of 2004, there were an estimated 810,000 suspects on the CACI. *Id.* at 7. We echo the Second Circuit’s observation: “[I]t [is] difficult to fathom how such a huge percentage of [Californians] could be included on a list ... unless there has been a high rate of error in determinations.” *Valmonte*, 18 F.3d at 1004. We conclude that there is a substantial risk that individuals will be erroneously listed on the CACI, and that California offers insufficient means for correcting those errors.

d. Balancing

[16] *Mathews* requires that we consider the risk of error in light of the individuals’ interest and the government’s interest. See *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004) (“The *Mathews* calculus ... contemplates a judicious balancing of these concerns....”). In the end, this is not a difficult case. The lack of any meaningful, guaranteed procedural safeguards before the initial placement on CACI combined with the lack of any effective process for removal from CACI violates the *Humphries*’ due process rights. Undoubtedly, California has a strong interest in protecting its youngest and most vulnerable residents from abuse, but that interest is not harmed by a system which seeks to clear those falsely accused of child abuse from the state’s databases. CANRA creates too great a risk of individuals being placed on the CACI list who do not belong there, and then remaining on the index indefinitely.

Beyond declaring that California’s procedural protections are constitutionally inadequate, we do not propose to spell out here precisely what kind of procedure California must create. The state has a great deal of flexibility in fashioning its procedures, and it should have the full range of options open to it. We do not hold that California must necessarily create some hearing prior to listing individuals on CACI. At the very least, however, California must promptly notify a suspected child abuser that his name is on the CACI and provide “some kind of hearing” by which he can challenge his inclusion. See *Goss v. Lopez*, 419 U.S. 565, 578, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); Henry J. Friendly, “*Some Kind of Hearing*,” 123 U. Pa. L.Rev. 1267 (1975) (discussing the various forms that a hearing can take). The opportunity to be heard on the allegations ought to be before someone other than the official who initially investigated the allegation and reported the name for inclusion on the CACI, and the standards for retaining a name on the CACI after it has been challenged ought to be carefully spelled out.

Nothing we have said here infringes on the ability of the police, or other agencies, to conduct a full investigation into allegations of child abuse. The need for such investigations—which, we acknowledge, are intrusive and difficult to conduct—is obvious. Nor does anything we have said undermine the ability of ap-

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propriate law enforcement agencies to maintain records on such investigations, even if the investigations do not result in formal charges or convictions. Again, we understand the need for law enforcement to rely on hunches and to collect bits and pieces of information to establish a history or pattern that may lead to formal charges in future cases. The mere maintenance of such investigatory files apart from the CACI does not raise concerns under the Due Process Clause. What California has done is not just maintain a central investigatory file, but attach legal consequences to the mere listing in such files. Once California effectively required agencies to consult the CACI before issuing licenses, the CACI ceased to be a mere investigatory tool. The fact of listing on the CACI became, in substance, a judgment against those listed.

B. Qualified Immunity

[17] Having decided that the **Humphries'** Due Process rights under the Fourteenth Amendment were violated, we next consider whether the individual defendants are entitled to qualified immunity. Officials who violate constitutional rights under color of law are entitled to qualified immunity unless "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Saucier v. Katz, 533 U.S. 194, 202, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). Although the district court did not reach the issue of qualified immunity we may do so where it is clear from the record before us. See Redding v. Safford Unified Sch. Dist. No. 1, 531 F.3d 1071, 1078, 1087 (9th Cir.2008) (en banc) (addressing qualified immunity analysis although the district court had found no constitutional violation).

[18] First, Detective Ansberry is entitled to summary judgment in his favor. We have held that "[i]nability under § 1983 arises only upon a showing of personal participation by the defendant." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.1989). The **Humphries** have not presented any evidence that Ansberry was in any way involved in the decision to list the **Humphries*1202** in the CACI, or to keep them on the CACI.

[19] Next we grant the motion for summary judgment in favor of Sheriff Baca. Under § 1983, a supervisor is only liable for his own acts. Where the constitu-

tional violations were largely committed by subordinates the supervisor is liable only if he participated in or directed the violations. *Id.* There is no evidence that Sheriff Baca had any direct involvement in the decision to list the **Humphries** on the CACI, or to keep them on the CACI.

[20] We also have no difficulty finding that Detective Wilson is entitled to qualified immunity. We have held that "an officer who acts in reliance on a duly-enacted statute ... is ordinarily entitled to qualified immunity" which is lost only if it is "so obviously unconstitutional as to require a reasonable officer to refuse to enforce it." Grossman v. City of Portland, 33 F.3d 1200, 1209-10 (9th Cir.1994). The California system, which denied the **Humphries** their procedural due process rights was not so obviously unconstitutional as to suggest to Detective Wilson that he ought not abide by CANRA's provisions and report the **Humphries** for listing on the CACI. A procedural due process analysis that requires a complicated balancing test is sufficiently unpredictable that it was not unreasonable for Detective Wilson to comply with the duly-enacted CANRA provisions. See Baker v. Racansky, 887 F.2d 183, 187 (9th Cir.1989). Therefore, Detective Wilson is entitled to qualified immunity for any damages resulting from the denial of the **Humphries'** procedural due process rights, and we grant summary judgment in his favor on that claim.

C. Monell Liability

Unlike Detective Wilson, the County is not entitled to qualified immunity for acting in good faith reliance on state law. See Owen v. City of Independence, 445 U.S. 622, 638, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980) (finding that there is no qualified immunity for local government). Rather, the County is subject to liability under Monell v. Department of Social Services, if a "policy or custom" of the County deprived the **Humphries** of their constitutional rights. 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). The district court did not address the County's liability under Monell because it found no violation of the **Humphries'** constitutional rights.

[21] We have held that "[i]n order to avoid summary judgment a plaintiff need only show that there is a question of fact regarding whether there is a city cus-

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tom or policy that caused a constitutional deprivation." *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir.2000). CANRA itself did not create a sufficient procedure by which the **Humphries** could challenge their listing on the Index. Nothing in CANRA, however, prevented the LASD from creating an independent procedure that would allow the **Humphries** to challenge their listing on the Index. By failing to do so, it is possible that the LASD adopted a custom and policy that violated the **Humphries'** constitutional rights. However, because this issue is not clear based on the record before us on appeal-and because the issue was not briefed by the parties-we remand to the district court to determine the County's liability under *Monell*.

III. CONCLUSION

For the reasons described above, CANRA violates the **Humphries'** procedural due process rights, in violation of 42 U.S.C. § 1983. We therefore reverse the district court's grant of summary judgment to the State and the County and remand for further proceedings consistent with this opinion. We affirm the district court's grant of *1203 summary judgment to Detectives Wilson and Ansbery and Sheriff Baca on the grounds of qualified immunity.

AFFIRMED in part; REVERSED in part and REMANDED.

C.A.9 (Cal.),2009.

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1537

END OF DOCUMENT

Kaye, Leonard

From: Kimura, Julie@DSS [jkimura@dss.ca.gov]
Sent: Thursday, March 19, 2009 12:45 PM
To: Kaye, Leonard
Cc: Richardson, Donna@DSS; Fitzgerald, Patrick@DSS; Dreher, Paulette@DSS; Grant, Crystal@DSS; Dowell, Joyce@DSS
Subject: FW: Child Abuse and Neglect Reporting Act (CANRA) State Mandate Claim - Child Welfare Services Funding Information
Importance: High
Attachments: Record Retention InformatinoS.docx; CANRA Request.doc; EMERGENCY RESPONSE.docx; ERA and ER Caseloads.pdf; Time Study Codes.docx

Hi Leonard:

Donna asked me to send this information to you and I apologize for not getting it to you sooner.

This is most of the information you requested from the California Department of Social Services during our last conference call. It includes the following:

- A description of what causes a hotline or other emergency response referral to move forward to a CWS case
- A break out of training activities associated with investigations and other CANRA activities
- Information on entering data on CWS/CMS which then populates the child abuse reporting form
- Record retention requirements
- Caseload for Emergency Response Assessments and Emergency Response cases
- Time study codes used by social workers for CANRA activities with funding information.

We are still working on the cost information and to see if we can get the number of new ER cases monthly, which will be sent under separate cover.

Julie Kimura
(916) 651-9955

From: Kaye, Leonard [mailto:lkaye@auditor.lacounty.gov]
Sent: Thursday, February 26, 2009 10:03 AM
To: Kaye, Leonard; Allan P Burdick/MAXIMUS; everroad@city.newport-beach.ca.us; dave.mcpherson@sanjoseca.gov; ramaiah.venkatesan@fin.co.santa-clara.ca.us; eroeser@sonoma-county.org; bhowze@sonoma-county.org; monican@ci.garden-grove.ca.us; bterkeurst@acr.sbcounty.gov; ngust@sacsheriff.com; lhobson@placer.ca.gov; cstrobels@co.napa.ca.us; mcady@ocsdfinancial.org; gina.surgeon@sdcountry.ca.gov; n2199@lapd.lacity.org; vs448@lapd.lacity.org; julianagmur@msn.com; ferlynjunio@maximus.com; steveoppenheim@maximus.com; timothy.barry@sdcountry.ca.gov; sherie.peterson@acgov.org; inderdeep.dhillon@sanjoseca.gov; pkindig@co.napa.ca.us; marilyn.flores@sdcountry.ca.gov; lwalker@acgov.org; ken.gross@acgov.org; crystal.hishida@acgov.org; ktibet@cacities.org; dcarrigg@cacities.org; gneill@counties.org; claude.kolm@acgov.org; kathy.sergeant@co.el-dorado.ca.us; jhenning@counties.org; jhurst@counties.org; qtho@solanocounty.com; amcgarvey@co.slo.ca.us; sheaton@rcrcnet.org; lgreg@so.cccounty.us; klange@co.tulare.ca.us; liz.lee@lacity.org; slewis1@sonoma-county.org; irene.lui@fin.sccgov.org; michelle.allersma@sfgov.org; ramaiah.venkatesan@fin.sccgov.org; Yaghobyan, Hasmik; jwiltshire@counties.org; louie.martirez@acgov.org; kai.mander@acgov.org; laura.lloyd@acgov.org; Castaneda, Carla@DOF; Shelton, Carla@DOF; Lynn, Tim@DOF; Madelyn Childs; Morris,

Stephen; Dowell, Joyce@DSS; Fitzgerald, Patrick@DSS; Richardson, Donna@DSS; Romero, Lorena@DOF; Shelton, Carla@DOF; Castaneda, Carla@DOF; Jewik, Ed; Sherwood, Diane; Stickney, Richard; Flores, Elaine; Smythe, Robert; Metz, Nancy; kerrs@dcsf.lacounty.gov; LeRue, Francesca; Ferrell, Suzanne P.; Daniels, Richard R.; Richardson, Donna@DSS; Culver, David E.

Cc: kbrooks@counties.org; jhurst@counties.org; gneill@counties.org; Fitzgerald, Patrick@DSS; Romero, Lorena@DOF; fmecca@cwda.org; csend@cwda.org; nancy.patton@csm.ca.gov; Brummels, Ginny@SCO; Spano, Jim@SCO; Yee, Connie; Naimo, John

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES RECORD RETENTION REQUIREMENTS

Statutes regarding the retention of child abuse reports may be found in Welfare and Institutions Code (WIC) Section 10851(e), Penal Code 11169(c), 11170(a)(1), and 11170(a)(3). WIC 10851(e) states notwithstanding the requirement to maintain a case record for each public social services case and retain the record for a period of three years, child protective services agencies may, but need not, retain child abuse reports that have been determined to be unfounded, as defined in Section 11165.12 of the Penal Code.

Penal Code 11169(c) states that agencies who file a report of child abuse or neglect with the DOJ shall keep those reports for the same period of time that the information is required to be maintained on the Child Abuse Central Index (CACI). Agencies may keep reports longer if they wish.

Penal Code 11170(a)(1) requires the Department of Justice (DOJ) to maintain an index of all reports of child abuse and severe neglect determined to be not unfounded. DOJ may adopt recordkeeping rules.

Penal Code 11170(a)(3) requires information from inconclusive or unsubstantiated reports to be deleted from the CACI after ten years if no other report concerning the same suspected child abuser is received within this time period. If another report is received within the 10 year period, this report and any prior report shall be kept for ten years.

There is no statutory or regulatory authority for DOJ to purge info from the CACI relating to substantiated reports of abuse and/or neglect. Therefore investigating agencies must maintain these files permanently.

All County Information Notice No. I-26-98 establishes a ten year purge for unsubstantiated or inconclusive child abuse reports. Counties are informed that DOJ will not purge substantiated reports and child protection agencies must keep their reports for the same period of time as the CACI.

All County Letter No. 06-15 applies to CWS and Probation agencies placing children, including probation wards, in foster care. Investigation reports must be kept for a minimum of three years on unfounded cases, ten years on inconclusive or unsubstantiated cases with no subsequent report about the same child abuser and ten years after a subsequent report. Reports on substantiated cases must be kept indefinitely.

CANRA REQUEST

REQUEST:

A description of what causes a hotline or other emergency response referral to move forward to a Child Welfare Services (CWS) case.

RESPONSE:

Any referral received by CWS has the potential to become a case. The following activities are mandated by Manual of Policies and Procedures (MPP) Division 31. It should be noted that there are several activities during this process, which are mandated by statute other than Child Abuse and Neglect Reporting Act (CANRA). It should also be noted that counties have different protocols; however, all counties are required to follow the MPP Division 31 regulations. Basic activities leading to the opening of a CWS case per MPP Division 31 regulations are as follows:

Intake (Div. 31-101 through 120.12):

- Interview reporting party (intake screener receives phone call) and/or review Suspected Child Abuse Report (SCAR) (form ss 8572).
- Fill out Emergency Response Protocol (SOC 423) or approved substitute.
 - This includes reviewing CWS history and interviewing by phone, if necessary, any collateral contacts. However, most collateral information would be gathered during the investigation.
- Determine response (an assessment tool – Structured Decision Making (SDM) or Comprehensive Assessment tool (CAT)-is used).
 - Evaluate Out
 - Differential Response (referral to community based organization)
 - Immediate in person investigation
 - Ten day investigation
- Response determination approved by supervisor.

Investigation (Div. 31-125 through 135.41):

- The social worker shall have in person contact with all children alleged to be abused, neglected or exploited and at least one adult who has information regarding the allegations.

- If referral is not unfounded, the social worker shall interview all children present at time of the investigation, and all parents who have access to the children alleged to be at risk of abuse, neglect or exploitation. Interviewing additional children not present at the time of the investigation is at the discretion of the county.
- The social worker shall make a determination as to whether services are appropriate (i.e. if allegations are substantiated), and if necessary, file a dependency petition.
- The social worker shall request assistance from Law Enforcement if necessary (i.e. safety factors are present or if removal of a child is necessary and the social worker is not deputized.)
- If the social worker determines that the child cannot be safely maintained in his/her home, the social worker shall ensure that authority to remove the child exists (if voluntary-written consent from parent/guardian, if involuntary- temporary custody per Welfare and Institutions Code Sections 305 & 306 or Court order).

There are a number of additional activities that could occur, but are not specifically dictated in the Emergency Response Regulations (such as Indian Child Welfare Act requirements, placement regulations, contact with collateral sources, MDIC interviews, etc., but these do not fall under CANRA mandates).

Child Abuse and Neglect Reporting Requirements (Div. 31-501)

- The county shall report abuse as defined in Penal Code (PC) Section 11165.6 to law enforcement departments and the District Attorney's office.
- When the county receives a report of abuse that has allegedly occurred in a licensed facility, the county shall notify the licensing office with jurisdiction over the facility.
- The county shall submit a report pursuant to PC Section 11169 to the Department of Justice of every case it investigates of known or suspected child abuse that it has determined not to be unfounded.

REQUEST:

A break out of training activities/costs associated with investigations and other CANRA reporting activities.

RESPONSE:

The following training activities are required for new CWS social workers and are conducted through Core Training courses which are funded by Title IV-E monies provided to the Regional Training Academies. Core Training does not use the terminology "investigation." Social workers are trained to "assess." These classes include information required to understand and perform all CWS assignments but are focused on Emergency Response duties. They fulfill many other requirements that are unrelated to CANRA mandates.

- Child Maltreatment Identification Part 1: Neglect, Emotional Abuse and Physical Abuse (1.5 days);
- Child Maltreatment Identification Part 2: Sexual Abuse and Exploitation(1.5 days);
- Critical Thinking in Child Welfare Assessment: Safety, Risk and Protective Capacity (1 day);
- Basic Interviewing (1 day).

REQUEST:

Information on activities associated with entering data on CWS/Case Management System (CMS) as the system automatically populates the form.

RESPONSE:

The activities for documenting allegations of a referral are built into CWS/CMS as part of the ER investigation process. Once a referral and the resulting documentation is complete, and if a cross report to Law Enforcement, the District Attorney and/or the Department of Justice is required, the social worker completes the cross report through a CWS/CMS generated report. The report requires placing a checkbox next to the required agency, generating a form which has the majority of necessary information populated from the case record, and writing a brief summary of the investigation which often can be copied from case contact notes.

There is also training provided by CWS/CMS regarding use of the CWS/CMS system which includes filling out the CWS/CMS fields that generate the cross report to DOJ. Training for this process would be included in CWS/CMS new user training and would take less than one hour. The cost of training to fill out the form fields would be considered absorbable within CWS/CMS new user training. All CWS social workers are expected to attend this training, regardless of their unit assignments.

EMERGENCY RESPONSE (ER) AND EMERGENCY RESPONSE ASSESSMENTS (ERA) CASELOAD DEFINITIONS

ERA

ERA is the initial intake service provided in response to reported allegations of child abuse, neglect or exploitation that is determined, based upon an evaluation of risk, to be inappropriate for an in-person investigation.

ER

ER services consist of a response system providing in-person response when required to reports of child abuse, neglect, or exploitation for the purpose of investigation and to determine the necessity for providing initial intake services and crisis intervention to maintain the child safely in his or her own home or to protect the safety of the child.

STATE OF CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES
ADMINISTRATION DIVISION

CHILD WELFARE SERVICES
FINAL MONTHLY CASELOADS
2008-09 AND 2009-10

ESTIMATES AND
RESEARCH SERVICES BRANCH
NOVEMBER 2008 SUBVENTION

MONTHLY DATA	EMERGENCY RESPONSE ASSESSMENT	EMERGENCY RESPONSE	FAMILY MAINTENANCE	FAMILY REUNIFICATION	PERMANENT PLACEMENT
2008-09					
July	14,825	42,797	27,733	24,632	47,289
August	14,831	42,767	27,784	24,611	47,116
September	14,838	42,736	27,835	24,590	46,942
October	14,844	42,707	27,884	24,570	46,771
November	14,851	42,677	27,935	24,549	46,598
December	14,857	42,647	27,984	24,529	46,427
January	14,863	42,617	28,035	24,508	46,253
February	14,870	42,587	28,086	24,487	46,079
March	14,876	42,561	28,132	24,468	45,913
April	14,883	42,531	28,183	24,447	45,740
May	14,889	42,502	28,233	24,427	45,568
June	14,895	42,472	28,284	24,406	45,395
FY TOTAL	178,321	511,600	336,110	294,227	556,091
FY AVERAGE	14,860	42,633	28,009	24,519	46,341
2009-10					
July	14,902	42,443	28,333	24,386	45,224
August	14,908	42,413	28,384	24,365	45,050
September	14,915	42,384	28,435	24,344	44,877
October	14,921	42,355	28,484	24,324	44,706
November	14,928	42,325	28,535	24,303	44,532
December	14,934	42,296	28,585	24,282	44,361
January	14,941	42,266	28,635	24,261	44,187
February	14,947	42,236	28,686	24,241	44,014
March	14,953	42,209	28,732	24,222	43,847
April	14,960	42,180	28,783	24,201	43,674
May	14,966	42,151	28,833	24,180	43,503
June	14,973	42,121	28,884	24,159	43,329
FY TOTAL	179,248	507,379	343,310	291,267	531,303
FY AVERAGE	14,937	42,282	28,609	24,272	44,275

ESTIMATES AND
RESEARCH SERVICES BRANCH
NOVEMBER 2007 SUBVENTION

CHILD WELFARE SERVICES
FINAL MONTHLY CASELOADS
2007-08 AND 2008-09

STATE OF CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES
ADMINISTRATION DIVISION

MONTHLY DATA	EMERGENCY RESPONSE ASSESSMENT	EMERGENCY RESPONSE	FAMILY MAINTENANCE	FAMILY REUNIFICATION	PERMANENT PLACEMENT
2007-08					
July	14,350	41,690	26,601	25,412	51,640
August	14,329	41,722	26,649	25,484	51,452
September	14,309	41,754	26,696	25,556	51,265
October	14,290	41,785	26,742	25,626	51,083
November	14,269	41,817	26,789	25,698	50,896
December	14,250	41,848	26,835	25,768	50,714
January	14,230	41,880	26,884	25,841	50,527
February	14,212	41,912	26,932	25,913	50,339
March	14,195	41,942	26,978	25,980	50,164
April	14,178	41,974	27,026	26,053	49,976
May	14,160	42,005	27,073	26,123	49,795
June	14,143	42,037	27,122	26,195	49,607
FY TOTAL	170,915	502,362	322,328	309,650	607,459
FY AVERAGE	14,243	41,863	26,861	25,804	50,622
2008-09					
July	14,125	42,068	27,169	26,265	49,426
August	14,108	42,100	27,217	26,337	49,238
September	14,090	42,132	27,266	26,409	49,051
October	14,073	42,163	27,313	26,479	48,869
November	14,055	42,195	27,362	26,551	48,681
December	14,038	42,226	27,409	26,621	48,500
January	14,020	42,258	27,457	26,694	48,312
February	14,002	42,290	27,506	26,766	48,125
March	13,986	42,319	27,549	26,831	47,955
April	13,968	42,351	27,598	26,903	47,768
May	13,951	42,382	27,645	26,973	47,586
June	13,933	42,414	27,673	27,046	47,399
FY TOTAL	168,348	506,896	329,163	319,876	580,910
FY AVERAGE	14,029	42,241	27,430	26,656	48,409

ESTIMATES AND
RESEARCH SERVICES BRANCH
NOVEMBER 2006 SUBVENTION

CHILD WELFARE SERVICES
FINAL MONTHLY CASELOADS
2006-07 AND 2007-08

STATE OF CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES
ADMINISTRATION DIVISION

MONTHLY DATA	EMERGENCY RESPONSE ASSESSMENT	EMERGENCY RESPONSE	FAMILY MAINTENANCE	FAMILY REUNIFICATION	PERMANENT PLACEMENT
2006-07					
July	15,313	40,644	25,951	24,631	54,450
August	15,300	40,535	25,968	24,663	54,144
September	15,286	40,426	25,987	24,697	53,849
October	15,273	40,321	26,007	24,730	53,567
November	15,259	40,212	26,029	24,764	53,277
December	15,246	40,107	26,052	24,797	52,997
January	15,232	39,998	26,077	24,831	52,707
February	15,218	39,889	26,103	24,866	52,418
March	15,206	39,791	26,127	24,897	52,157
April	15,192	39,682	26,154	24,932	51,867
May	15,179	39,577	26,181	24,965	51,587
June	15,165	39,468	26,210	25,000	51,298
FY TOTAL	182,869	480,650	312,846	297,773	634,318
FY AVERAGE	15,239	40,054	26,071	24,814	52,860
2007-08					
July	15,152	39,363	26,237	25,033	51,018
August	15,138	39,254	26,267	25,068	50,728
September	15,125	39,145	26,296	25,102	50,439
October	15,111	39,040	26,325	25,136	50,159
November	15,098	38,931	26,355	25,170	49,869
December	15,084	38,825	26,384	25,204	49,589
January	15,071	38,717	26,414	25,238	49,300
February	15,057	38,608	26,444	25,273	49,010
March	15,044	38,506	26,472	25,305	48,739
April	15,030	38,397	26,503	25,340	48,450
May	15,017	38,292	26,532	25,373	48,170
June	15,004	38,183	26,563	25,408	47,881
FY TOTAL	180,931	465,261	316,792	302,650	593,352
FY AVERAGE	15,078	38,772	26,399	25,221	49,446

STATE OF CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES
ADMINISTRATION DIVISION

CHILD WELFARE SERVICES
FINAL MONTHLY CASELOADS
2005-06 AND 2006-07

ESTIMATES AND
RESEARCH SERVICES BRANCH
NOVEMBER 2005 SUBVENTION

MONTHLY DATA	EMERGENCY RESPONSE ASSESSMENT	EMERGENCY RESPONSE	FAMILY MAINTENANCE	FAMILY REUNIFICATION	PERMANENT PLACEMENT
2005-06					
July	16,746	42,774	25,506	23,628	57,025
August	16,818	42,774	25,455	23,607	56,748
September	16,890	42,775	25,424	23,594	56,467
October	16,960	42,775	25,406	23,584	56,194
November	17,032	42,775	25,398	23,575	55,911
December	17,102	42,776	25,396	23,567	55,637
January	17,174	42,776	25,398	23,559	55,354
February	17,246	42,777	25,404	23,551	55,070
March	17,311	42,777	25,411	23,543	54,814
April	17,383	42,778	25,420	23,535	54,531
May	17,453	42,778	25,430	23,527	54,257
June	17,525	42,778	25,441	23,519	53,973
FY TOTAL	205,640	513,313	305,089	282,789	665,981
FY AVERAGE	17,137	42,776	25,424	23,566	55,498
2006-07					
July	17,595	42,779	25,452	23,511	53,699
August	17,667	42,779	25,464	23,503	53,415
September	17,739	42,780	25,476	23,495	53,132
October	17,809	42,780	25,488	23,487	52,857
November	17,881	42,781	25,501	23,479	52,574
December	17,951	42,781	25,513	23,471	52,299
January	18,023	42,782	25,525	23,463	52,016
February	18,095	42,782	25,538	23,454	51,732
March	18,160	42,782	25,549	23,447	51,476
April	18,232	42,783	25,562	23,439	51,192
May	18,302	42,783	25,574	23,431	50,918
June	18,374	42,784	25,586	23,423	50,635
FY TOTAL	215,828	513,376	306,228	281,603	625,945
FY AVERAGE	17,986	42,781	25,519	23,467	52,162

STATE OF CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES
ADMINISTRATION DIVISION

CHILD WELFARE SERVICES
FINAL MONTHLY CASELOADS
2004-05 AND 2005-06

ESTIMATES AND
RESEARCH SERVICES BRANCH
NOVEMBER 2004 SUBVENTION

MONTHLY DATA	EMERGENCY RESPONSE ASSESSMENT	EMERGENCY RESPONSE	FAMILY MAINTENANCE	FAMILY REUNIFICATION	PERMANENT PLACEMENT
2004-05					
July	16,172	44,205	24,731	23,170	60,770
August	16,253	44,223	24,710	23,159	60,414
September	16,326	44,242	24,690	23,141	60,165
October	16,399	44,261	24,670	23,121	59,924
November	16,473	44,280	24,651	23,096	59,675
December	16,545	44,298	24,631	23,070	59,434
January	16,620	44,318	24,612	23,041	59,185
February	16,694	44,337	24,592	23,012	58,938
March	16,762	44,354	24,575	22,985	58,711
April	16,836	44,373	24,555	22,954	58,463
May	16,909	44,392	24,537	22,924	58,223
June	16,983	44,411	24,517	22,892	57,974
FY TOTAL	198,972	531,694	295,471	276,565	711,876
FY AVERAGE	16,581	44,308	24,623	23,047	59,323
2005-06					
July	17,055	44,430	24,499	22,862	57,734
August	17,130	44,449	24,480	22,830	57,484
September	17,204	44,468	24,461	22,798	57,235
October	17,277	44,487	24,443	22,767	56,994
November	17,351	44,506	24,424	22,735	56,747
December	17,423	44,525	24,406	22,704	56,505
January	17,498	44,544	24,387	22,672	56,256
February	17,573	44,563	24,369	22,639	56,008
March	17,640	44,581	24,352	22,610	55,783
April	17,714	44,600	24,333	22,578	55,534
May	17,787	44,618	24,315	22,547	55,293
June	17,861	44,638	24,297	22,515	55,044
FY TOTAL	209,513	534,409	292,766	272,257	676,617
FY AVERAGE	17,459	44,534	24,397	22,688	56,385

**CHILD WELFARE SERVICES
CHILD ABUSE INVESTIGATION AND REPORTING
TIME STUDY CODE ACTIVITIES
March 11, 2009**

Time Study Code 5134 Emergency Assistance – ER Referrals

Includes time spent receiving emergency referrals, assessing whether the referral is a child welfare services referral, completing the ER protocol, and investigating emergency allegations, including collateral contacts. This includes time spent closing those cases in which allegations are unfounded. For those cases that the allegations are not unfounded, it includes time spent in investigation activities, reporting to the California Department of Justice and noticing the parents regarding the temporary custody of the child.

Funding: TANF (85/00/15, federal/state/county share respectively)

Time Study Code 5441 CWS – Minor Parent Investigations (MPI) AB 908

This code has been established to capture social worker time spent performing in-person investigation activities for teen pregnancy disincentive requirements. Investigation activities include:

Completing an in-home investigation of a minor parent's allegation of risk of abuse/neglect and returning the CA 25s to the eligibility worker indicating the results of the investigation; completing an in-person assessment of the minor parent and his/her child(ren); developing a safety plan that will include MPS for the minor parent and his/her child(ren); and referrals of minor parent to other available services.

Funding: TANF (50/35/15)

Time Study Code 1701 CWS – Emergency Hotline Response

(Code deleted effective with the December 05 quarter and investigation/reporting activities now reported to time study code 5134)

Includes time spent performing initial activities in response to and investigation of all reports or referrals alleging abuse, neglect or exploitation of children. Allowable Emergency Hotline Response activities include, but are not limited to:

Operating a 24-hour emergency hotline response program; evaluating and investigating telephone reports of abuse, neglect or exploitation, including reports on the 24-hour hotline; determining client risk for emergency response by screening in-coming calls; determining whether a reported situation is an emergency or non-emergency within required timeframes; determining emergency response needs; providing crisis intervention; referring clients to appropriate emergency response service agencies; gathering documentation of abuse for law enforcement agencies; documenting and completing all required forms; and preparing written reports and assessments.

Funding: Title IV-E (50/35/15)

**CHILD ABUSE AND NEGLECT REPORTING ACT
COUNTY WELFARE DEPARTMENT
TIME SURVEY ACTIVITIES**

Currently, Welfare and Institutions Code Section 16504 and Manual of Policies and Procedures Division 31 require county child welfare services (CWS) agencies to respond to and investigate reports of child abuse, neglect, or exploitation. Under the Child Abuse and Neglect Reporting Act (CANRA) implemented in 1980, CWS agencies were required to complete additional child abuse reporting activities associated with completing and archiving the *Child Abuse Summary Report* (SS 8583) and the *Suspected Child Abuse Report* form (SS 8572).

The Commission on State Mandates has found that CANRA statute established a state mandate which allows counties to be reimbursed for the county share of cost associated with specific child abuse reporting activities. In order to be reimbursed, counties must determine how much time is spent completing the following activities:

- Penal Code 11169(a), submit an individual's name to the Department of Justice (DOJ) for listing on the Child Abuse Central Index (CACI) by completing the SS 8583 and mailing the form to DOJ.
- Penal Code 11166(i), cross report any "known or suspected instance of child abuse or neglect" to law enforcement, the District Attorney's office and Probation (if required), by completing the SS 8572 and mailing to the appropriate agencies.
- Penal Code 11169(b), notify the individual in writing (currently by completing the *Notice of Child Abuse Central Index Listing* [SOC 832] form) that his/her name has been submitted to the DOJ for listing on the CACI.
- Penal Code 11169(c), retain a copy each form with the underlying investigative report in the CWS files.
- Respond to DOJ requests for information.

Counties are asked to complete the survey below to help identify the amount of time spent completing these child abuse reporting activities. Please provide answers to the time survey questions below and return to Cathy Senderling at xxx, by October 15, 2009.

**CHILD ABUSE AND NEGLECT REPORTING ACT
TIME STUDY SURVEY QUESTIONS**

During the June 2009 quarter, please indicate:

1. The number of *Child Abuse Summary Report* (SS 8583) forms that were completed by county staff, the average amount of time spent completing the form, and the classification of the worker completing the form.

June 2009 Quarter - Tentative Results:
Eight Counties completed 15,101 SS 8583 forms
Weighted average state-wide time for each form was 22 minutes

2. The number of *Suspected Child Abuse Report* (SS 8572) forms that were completed by county staff, the average amount of time spent completing the form, and the classification of the worker completing the form.

June 2009 Quarter - Tentative Results:
Eight Counties completed 19,469 SS 8572 forms
Weighted average state-wide time for each form was 23 minutes

3. The number of *Notice of Child Abuse Central Index Listing* (SOC 832) forms completed and mailed by county staff, the average amount of time spent completing and mailing the forms, and the classification of the worker completing the forms.

June 2009 Quarter - Tentative Results:
Eight Counties completed 12,394 SOC 832 forms
Weighted average state-wide time for each form was 13 minutes

4. The amount of time required to file copies of the SS 8583 and SS 8572 forms with a copy of the investigative report and the classification of the workers who filed copies of the reports.

June 2009 Quarter - Tentative Results:
Four Counties completed 9,442 form/report filings
Weighted average state-wide time for each form was 22 minutes

5. The number of requests for information the county CWS agency received from DOJ, how much time it took staff to respond to the DOJ inquiries, and the classification of the workers who responded to the inquiries.

June 2009 Quarter - Tentative Results:
Seven Counties responded to 3,585 DOJ requests
Weighted average state-wide time for response was 9 minutes

6. The sources used to get the answers above as well as the methodology used to calculate the average amount of time spent on these activities.

June 2009 Quarter - Tentative Results:
Eight Counties used various sources and methods



**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

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JUDI E. THOMAS

**Los Angeles County's Revised Parameters and Guidelines
Interagency Child Abuse and Neglect Investigation Reports [00-TC-22]**

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached revised parameters and guidelines [Ps&Gs] for the Interagency Child Abuse and Neglect [IACN] Investigation Reports [00-TC-22] reimbursement program. This version of the ICAN Ps&Gs updates the draft which was timely filed by the County on January 14, 2008 and includes reasonable reimbursement methodology [RRM] provisions to simplify claiming labor costs of law enforcement and county welfare agencies incurred in performing repetitive ICAN tasks.

I declare that I have met and conferred with state and local officials, claimants and experts in the ICAN field in developing the County's revised ICAN Ps&Gs.

I declare that it is my information and belief that the activities set forth in the revised ICAN Ps&Gs are reasonably necessary in providing ICAN services which were found to be reimbursable in the Commission on State Mandates statement of decision, adopted on December 19, 2007.

I declare that it is my information and belief that costs incurred in performing ICAN activities which are set forth in the County's revised ICAN Ps&Gs are reimbursable "costs mandated by the State", as defined in Government Code section 17514.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

January 10, 2010; Los Angeles, CA
January 10, 2010; Los Angeles, CA

Date and Place

Leonard Kaye

Leonard Kaye

Signature