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

SUBJECT: RESPONSE TO LOS ANGELES REVISED PARAMETERS AND GUIDELINES

Dear Ms. Higashi:

This letter is the California Department of Social Services (CDSS) response to the revised proposed parameters and guidelines (PG) submitted by Los Angeles County (County) for Claim No. 00-TC-22 (Interagency Child Abuse and Neglect (ICAN) Investigation Reports).

In its PG, the County proposes a reimbursement methodology which describes the totality of its law enforcement response to reports of child abuse, leading up to and including the arrest of suspects and referral to the District Attorney for criminal prosecution. The County wants to transport the Commission to a world in which the requirements of Child Abuse and Neglect Reporting Act (CANRA) mirror activities associated with criminal justice. The problem with this approach is the fact that the CANRA world and the criminal justice world are very separate and distinct from each other. The Commission must reject the PG because the activities described in it are not related to or required by CANRA. This is not to say that there is not a reasonable expectation on the part of the public that investigative agencies perform child abuse investigations, or that there is no duty for investigative agencies to perform investigations of child abuse. This is to say only that those duties are not grounded in or required by CANRA.

1. Child protection associated with CACI was the purpose of CANRA.

CANRA is the statutory authority for the Child Abuse Central Index (CACI) (Penal Code section 11164 et. Seq.). As set forth in the Child Abuse and Neglect Reporting Act Task Force Report of 1994, (Report, Exhibit 6 of the PG) the purposes of CANRA are to (1) identify child abuse victims for early intervention and protection by public authorities as early as possible 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. The first purpose was accomplished in establishing mandatory reporting responsibilities of identified persons. The second purpose was accomplished through the establishment of the CACI.

While it is true as indicated in the Report that investigations play an important role in the operation of the [CACI] (Report, page 6), that is not the same thing as saying that CANRA established an affirmative duty for investigating agencies to investigate child abuse. And while the Report suggests in footnote 8 that the "active investigation" requirement was mandated under Senate Bill 644, the fact is that the "active investigation" phrase contained in Penal Code section 11169 already existed when Senate Bill 644 was passed. But even if this were not the case, the purpose of the legislature's use of the phrase "active investigation" was to ensure the quality of the reports underlying the information being referred by investigating agencies to the Department of Justice for listing on CACI. A repository such as CACI would serve no legitimate law enforcement or child protection purpose if agencies could refer information to the Department of Justice for listing on CACI based on whim or because the agency did not like the alleged suspect. As a flagging system, the value of CACI to public safety is grounded in the fact that there is some qualitative threshold for submission, so that if and when an agency required to clear the CACI prior to granting a license to an individual gets a match, that there is some substance underlying that match, which triggers that agency to do investigative follow up. The term "active investigation" therefore served solely as a filter limiting the information referred by child abuse investigating agencies to the Department of Justice for listing on CACI.

2. CANRA imposes a very limited affirmative duty to investigate.

With one limited exception, CDSS rejects the notion that CANRA imposes an affirmative duty on law enforcement or the county welfare department to investigate reports of child abuse. The issue presented is whether the legislature intended to establish an affirmative duty on identified agencies including law enforcement and county welfare departments in CANRA, or whether the legislature in CANRA was directing these agencies to perform certain tasks with respect to investigations otherwise performed pursuant to other authorities. In this regard, it is important to note how easy it is for the legislature to express its intent to establish an affirmative duty to investigate. It can say "shall investigate". It can say "perform an investigation". It can say "must investigate". These words however appear in only one section in CANRA. Penal Code section 11165.14 provides:

The appropriate local law enforcement agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a school site and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

Though the words “investigate, investigation, or investigator” appears in several other sections of CANRA, nowhere else in CANRA does the legislature express or impose an affirmative duty on investigating agencies to investigate. As demonstrated below, in every instance when the legislature refers to the word investigate or investigations, it is referring either to investigations otherwise performed by investigating agencies, how to conduct an investigation as opposed to whether to conduct an investigation, and what to do when an investigation is performed. These provisions do not mandate the conduct of an investigation.

a. Penal Code Section 11164.

Use of the word investigation is used to refer to how to conduct an investigation, that investigators consider the needs of the child victim.

b. Penal Code Section 11165.7(18)

This section defines a mandatory reporter as including certain investigators.

c. Penal Code Section 11165.9

This section identifies the agencies to which reports of child abuse shall be made. The identified agencies are required to accept those reports regardless of whether the receiving agency “lacks subject matter or geographical jurisdiction to investigate”. Indeed, if the legislature intended to establish an affirmative requirement on law enforcement agencies or the county welfare department to investigate reports of child abuse, why did the legislature choose to be silent on this issue in this section 11165.9, which specifies that reports of suspected abuse are to be made with law enforcement or county agencies.

While this section imposes a duty upon these agencies “receive” reports of child abuse, they are not directed to investigate these reports. The only reasonable explanation for this is that the legislature assumed investigative activities were pre-existing responsibilities, and therefore the legislature did not intend to create that duty through CANRA.

d. Penal Code Section 11165.12

This section defines unfounded, substantiated, and inconclusive reports. In conjunction with Penal Code section 11169, these sections taken together describe the trigger for the affirmative responsibility (properly reimbursable) for investigating agencies to refer certain information to the Department of Justice for listing on the Child Abuse Central Index. These sections say that when an active investigation is performed (as opposed to requiring the performance of an active investigation) and if the investigator determines the report to be not unfounded as described in section 11165.12, the duty to refer the matter to DOJ exists. These sections describe what an investigator must do with an investigation. The investigator must decide which of the three conclusions applies to the results of the investigation. This activity is not an investigative activity, but a judgment made by the investigator at the conclusion of the investigation.

e. Penal Code Section 11166(d)(3)(c)

This section authorizes (as opposed to mandating) local law enforcement to investigate abuse even if the victim reaches majority.

f. Penal Code Section 11166(j) and (k)

This provisions require properly reimbursable cross reporting between county welfare departments and law enforcement agencies. These provisions do not indicate any affirmative duty for any agency to perform an investigation.

g. Penal Code Section 11166.1

This section requires properly reimbursable cross reporting with the appropriate licensing office. This provision does not indicate any affirmative duty for any agency to perform an investigation.

h. Penal Code Section 11166.2

This section requires properly reimbursable sending of investigation reports to the licensing agency. This provision directs investigating agencies on what to do with an investigative report. It does not mandate the creation of an investigative report.

i. Penal Code Section 11166.3

This section requires coordination between law enforcement agencies and county welfare departments in connection with investigations of child abuse. When law enforcement starts an investigation, this provision requires law enforcement to report to the county welfare department within 36 hours after starting its investigation. This provision compared to other provisions in CANRA provides the clearest expression

by the legislature on the issue at hand, of whether it intended to establish an affirmative duty to investigate child abuse reports. Penal Code section 11166.3(a) provides " [t]he Legislature intends that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases." (emphasis added) In this statement, the legislature did not create a mandate for new investigatory duties. Rather, it identified and addressed the coordination of existing investigatory duties that both law enforcement and county welfare departments had prior to the enactment of CANRA.

This section also requires the sharing of investigative findings with identified agencies such as licensing and the district attorney. These provisions establish requirements on county and law enforcement agencies on what to do with an investigation report. These provisions do not specifically require the conduct of any investigation.

j. Penal Code Section 11167

This section permits mandatory reporter to provide an investigator with relevant information. This section also requires a child protective service agency representative who is investigating child abuse to provide to the suspect at the time of initial contact with certain information. Again, this provision instructs on how to conduct an investigation, not whether to conduct an investigation. This provision does not mandate investigations.

k. Penal Code Section 11167.5

This section makes confidential the mandated report and any investigative reports based thereon. This section provides who these reports may be shared with. This provision does not mandate investigations.

l. Penal Code Section 11169

As discussed in letter d., above, this section directs investigating agencies as to what to do with certain investigative reports. Section 11169 (a) provides that "an agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded. . ." This is not a mandate to investigate. This is a mandate upon the investigating agency to refer cases to DOJ when it investigates and makes certain determinations. If law enforcement or a county welfare department does not investigate, it cannot refer the matter to DOJ. This fact is made clear in the next sentence of Penal Code section 11169; "An agency shall not forward a report to the Department of Justice unless it has

conducted an active investigation . . .” Law enforcement or county welfare departments do not violate any provision of CANRA if they choose not to investigate a report of child abuse. CANRA only requires that if a report is to be filed with DOJ, that it be based on an active investigation. A proper analogy would be good Samaritan laws. If a person witnesses another person with injuries, there is no duty to get provide assistance. If however, a good Samaritan decides to provide assistance, certain duties are created to protect the victim from reckless conduct of the good Samaritan. Under CANRA, law enforcement is not obligated to investigate, but when it does, certain duties are created by CANRA when the investigative disposition is not unfounded. This section does not direct the performance of an investigation.

m. Penal Code Section 11170

This section directs investigating agencies as to what to do with certain investigative reports, and what steps an investigating agency must take after completing its investigation. This section further directs the Department of Justice and investigating agencies as to what information it may provide to requesting agencies. This section does not direct the performance of an investigation.

Penal Code section 11170(a) gives the Department of Justice authority to adopt rules governing record keeping and reporting under CANRA. Based on this language, it is not within the scope of authority of the Department of Justice to describe the content of any child abuse investigation, or even to establish a duty to investigate child abuse. The Department of Justice could however describe the content of what an “active investigation” is under Penal Code section 11169. The Department of Justice however has not done so. The Department of Justice has never identified any specific investigative action or set of actions as required for reports submitted to it by agencies for listing in CACI.

n. Penal Code Section 11170.5

This section authorizes adoption agencies to obtain original investigation reports. This provision does not mandate investigations.

o. Penal Code Section 11171

This section promotes the enhancing of medical examination procedures in order to improve the investigation of child abuse. This provision does not mandate investigations.

p. Penal Code Section 11171.5

This section authorizes a peace officer in the course of an investigation to apply to a magistrate for an order directing the victim to be x-rayed without parental consent. This provision provides an additional tool to investigators investigating child abuse. This provision does not mandate investigations.

q. Penal Code Section 11172

This section provides immunities from liability for mandated reporters and investigators. This provision does not mandate investigations.

r. Penal Code Section 11174.1

This section requires the Department of Justice in cooperation with CDSS to prescribe by regulations guidelines for the investigation of child abuse in out of care settings. This provision, which has not been carried out by the Department of Justice, relates to describing what protocols may be applied to child abuse investigations, not whether child abuse investigations are required in any particular case. Indeed, there is no regulation, rule, guidance, or other form of instruction on the conduct of child abuse investigations relating to CANRA from the Department of Justice. This fact should be very instructive to the Commission in its consideration of whether CANRA imposes a duty on law enforcement and other identified agencies to perform investigations on all reports of child abuse. The Department of Justice's silence on this point is consistent with the view that there is no mandate for investigations in CANRA. If there were such a mandate, one would reasonably presume that after decades of administration of CANRA the Department of Justice would address and regulate that mandate.

s. Penal Code Section 11174.3

This section authorizes child interviews at school, and provides the child the right to be interviewed in private or with a school staff person. This provision relates to how to conduct investigations, and what rights certain individuals have during the course of investigations. This provision does not establish a duty to conduct investigations. It is clear from this review of provisions in CANRA that use the term investigate, investigator or investigations, that with the exception of Penal Code section 11165.14 there is no direct mandate created by the legislature in CANRA to required law enforcement agencies or other agencies to perform an investigation of reported child abuse. To the extent that Penal Code section 11165.14 creates such a duty, reimbursement is appropriate.

3. The PG is organized in a manner consistent with a clear criminal justice orientation, which is not mandated by CANRA.

a. CANRA does not differentiate abuse cases based on severity.

Even assuming that CANRA imposes investigative responsibilities on law enforcement, the proposed activities subject to that mandate in the PG go well beyond any conceivable mandate found in CANRA. In the criminal justice world, the nature of the law enforcement response to reports of child abuse is based on whether abuse occurred, and if so, how severe the injuries were to the victim. Thus level 1 and 2 list the activities when it is determined that no abuse has occurred. Levels 3 and 4 are triggered when abuse is determined to have occurred, but differ based on the severity of the injuries to the victim. This organization makes sense in a criminal justice world where serious crimes receive priority in terms of law enforcement resources and efforts. This organization however bears no relation to CANRA, as CANRA does not differentiate investigatory responsibilities of responsible agencies based on the severity of injuries. Even assuming arguendo that CANRA requires an investigation, there is nothing in CANRA that specifies that the nature or extent of that investigation somehow depends on the seriousness of the alleged abuse or the seriousness of the victim's injuries.

b. CANRA does not require identification of suspects.

Proof of this criminal justice orientation is found in the county's description as it relates to the investigation and identification of the suspected abuser. While suspect identification and apprehension is material in the criminal justice world and is necessary for the criminal prosecution of an individual, it is not required by CANRA. In Penal Code section 11165.6, the legislature defines child abuse or neglect to include "physical injury or death inflicted by other than accidental means upon a child by another person". In Penal Code section 11165.12, CANRA describes the three dispositional findings it requires of investigative reports. None of these findings requires the identification of a suspect. While it is true that the form promulgated by the Department of Justice includes suspect identification fields, there is nothing in law or in those forms which states that the form is incomplete without suspect identification information.

c. CANRA does not require proof beyond a reasonable doubt.

The activities in levels 3 and 4 are consistent with the criminal justice standard of proving a suspects guilt by a beyond a reasonable doubt. Basically every activity described in the PG after the patrol officer's activities relate to the duty of law enforcement to develop a case for criminal prosecution. This necessary and

exhaustive investigatory work is required to establish proof of guilt. Potential alibis must be thoroughly investigated. Potential alternative suspects must be investigated and excluded. Forensic evidence must be established and accounted for. In other words, no reasonable investigative step or avenue can be ignored or avoided if a successful criminal prosecution is to be made.

The standards for referring a matter to the Department of Justice for listing on CACI as provided for in Penal Code section 11169 are completely different than the standards for criminal justice. Even the highest standard of proof identified in CANRA, namely, what is required for a substantiated disposition, falls far short of what it needed for an effective criminal prosecution. Penal Code section 11165.12 provides that a substantiated report is one where based on the evidence it is more likely than not that abuse occurred. Even if there are other plausible alternative explanations for the conditions presented by an allegedly abused child that would be fatal to any criminal prosecution under the beyond a reasonable doubt standard of proof, such evidence is not a problem when the standard for investigations under CANRA is a preponderance of evidence. The PG makes no attempt to differentiate the activities required to meet a preponderance of evidence standard from those activities required to meet the criminal justice standard of proof. The PG completely ignores this critical distinction in the type of investigatory activity it is asking the Commission to accept as mandated by CANRA. The county wants to transport the Commission to its criminal justice world, which is not the world of CANRA.

The counties failure to appreciate this difference is further evidenced by its failure to acknowledge the existence of the inconclusive investigative disposition. Under its law enforcement PG, the county comes to one of two outcomes. Either the suspect committed the alleged offense, or the allegations are proved for criminal justice purposes. However, the inconclusive conclusion under Penal Code section 11165.12, that there is insufficient evidence and inconclusive findings, can be made at any stage of any investigation. The county's interpretation of the definition of inconclusive has improperly led it to believe that inconclusive as defined represents a mandate to take any and all investigative steps possible to obtain sufficient evidence to reach a substantiated or unfounded finding. What the county's interpretation fails to realize however is that the legislature never suggested or intended that an inconclusive finding was something to be avoided if possible. There is no mandate or direction for an investigatory agency to perform more investigation in an effort to reach either an unfounded or substantiated disposition. Under CANRA, the inconclusive finding stands shoulder to shoulder with the other two possible findings. There can be no doubt over the legislature's

comfort level with an inconclusive child abuse investigative report in light of the fact that Penal Code section 11169 requires inconclusive investigative reports to be referred to the Department of Justice for listing on CACI.

While in the criminal justice arena investigative uncertainty is damaging if not fatal to effective prosecution, for purposes of CANRA investigative uncertainty is not only acceptable, it is good enough to trigger the requirement that investigative agencies refer those matters to the Department of Justice for listing on CACI.

CANRA does not require that no stone be left unturned in the course of child abuse investigations. Rather, the only statement contained in CANRA that remotely relates to the nature of the investigation is that it be "active" under Penal Code section 11169. The word active is not defined in CANRA nor is it defined by the Department of Justice. The Commission should not be compelled to accept the proposition of the County that because the described activities is what they do in child abuse investigations for criminal prosecution purposes, the State obligated to reimburse the county for all of these activities. Rather, the proper issue is what specific investigative activities are required under CANRA. The PG does not speak to this issue.

d. CANRA does not mandate the extensive investigation performed for criminal justice purposes.

If all of the follow up investigatory activities after the patrol officer's initial investigation that are described in the PG are mandated by CANRA, then the investigatory protocols required of county welfare departments are grossly out of compliance with CANRA. CDSS regulations at MPP 31-101 through 135 provide the investigatory requirements that county welfare departments must follow in response to a report of in home child abuse. A copy of these rules is attached. These rules describe the emergency response protocols for county welfare department social workers. In summary, these rules require the social worker to first decide whether an in-person investigation is necessary, which includes consideration of a multitude of considerations. If an in-person investigation of reported child abuse is determined to be necessary, CDSS regulations at MPP 31-115 describe what steps are necessary for the conduct of the investigation. These rules require direct contact with all alleged child victims, and at least one adult who has information regarding the allegations. If after that stage the social worker does not find the referral to be unfounded, the social worker must conduct an in-person investigation with all children present at the time of the initial in-person investigation, all parents who have access to the child alleged to be at risk of

abuse, noncustodial parents if he/she has regular or frequent in-person contact with the child, and make necessary collateral contacts with persons having knowledge of the condition of the child. Based on these investigative activities, the social worker is required under CDSS' regulations at MPP 31-501 to determine whether the results of the investigation require referral to the Department of Justice under CANRA. There is no requirement for redundancy in the investigation as described PG between patrol officer and detective interviews. There is no tracking, booking, or arresting of suspects. There is no requirement for forensic evidence to be collected or analyzed. There is no review of school records. Basically, CDSS' investigatory requirements parallel the law enforcement activities described in the PG only up to the point that the patrol officer completes his or her duties in the investigation.

It is inconsistent and illogical for the Commission to determine that the activities proposed in the law enforcement portion of the PQ are required by CANRA, but are not required of county welfare departments performing the same investigatory function for in-home cases of reported child abuse. Social workers performing child abuse investigations are required to make investigatory determinations of unfounded or not based on the information they collect during the course of their investigations. Every year thousands of reports are referred by county welfare departments to the Department of justice based on the results of these investigations. CDSS is aware of no case of instance in which the Department of Justice rejected a county welfare department CACI referral based on the sufficiency of the social worker's investigation. If these investigations comport with CANRA, and the county does not contend otherwise, it is improper for the county to maintain that the exhaustive and redundant investigatory steps performed by law enforcement in the criminal justice arena are mandated by CANRA.

This discussion illustrates the fundamental flaw in the county's position that CANRA mandates investigations of child abuse reports. CANRA identifies investigating agencies, and with inconsequential differences does not distinguish between the duties these agencies have under CANRA. Yet the county proposes a markedly different claim for law enforcement activities and county welfare department activities. A rationale for this difference cannot be found in CANRA. In the PG, the county does not state what CANRA requires. The county states only what particular agencies do. This self-serving proposal that what an agency does is the same as what is mandated by law is irrational. Either CANRA mandates investigatory redundancy, helicopters trailing fleeing suspects, scuba teams scouring the bottom of ponds, dna analysis, and the like, or it does not. The fact is

that all of these activities are discretionary, even in the criminal justice field. By definition, discretionary activities cannot also be mandatory activities.

If CANRA provides the discretion for county welfare departments to perform the investigations required by CDSS' regulations, it cannot be determined by the Commission that the more rigorous investigatory activities performed by law enforcement are mandated by CANRA.

This problem obviously puts the Commission in the difficult position of having to determine whether it is possible to describe a floor of non-discretionary activities that represents mandated activities under CANRA, when the law does not clearly state that a duty to investigate child abuse reports exists, and no specific investigative activities are required. In this regard, just because CDSS requires certain investigative steps to be taken when county social workers respond to reports of child abuse can it be concluded that those steps are mandated by CANRA. If CDSS had the discretion under CANRA to decide in favor of the investigative steps set forth in its regulations, it surely had equal discretion to require either a greater or lesser number of investigative activities under these circumstances.

In considering whether an investigatory mandate exists on the Department of Justice from Penal Code section 12076 to determine the fitness of gun purchasers, the Court of Appeals in the case of *Grey v. State of California*, (1989) 207 Cal. App.3d 151 concluded that no mandate existed precisely because the statute under review "permits the department to exercise its discretion to determine how to investigate potential handgun purchasers" (p. 155). Like CANRA, the court in *Grey* stated that the gun law "says nothing about how the determination should be made. The failure of the Legislature to specify what investigation is required suggests that this is a matter left to the discretion of the Department of Justice. If the Legislature had intended the department to follow a certain procedure when investigating the background of handgun purchasers, it could have so stated." (p. 156)

CANRA does not specify how the disposition of unfounded, inconclusive or substantiated is to be made. CANRA does not specify any particular investigative action or procedure to be followed. Under these circumstances, while a mandate to investigate may arguably exist, the absence of legislative direction on what investigatory steps are required, and the existence of broad discretion enjoyed by investigating agencies on what investigative steps to take, must lead to the conclusion that CANRA does not mandate any specific investigative activities.

What is clear however is that the county's description of mandated law enforcement activities in the PG does not represent an appropriate starting place to begin the analysis of what investigative activities if any, are mandated by CANRA.

e. If the Commission adopts the county's PG, it will undercut child safety.

In both levels 3 and 4, the PG provides that the filling out the forms for referral of a matter to the Department of Justice under Penal Code section 11169 occurs after the arrest of the alleged suspect. This practice undermines the child protection aspects of Penal Code section 11169. Under existing law at Section 1522 of the Health and Safety Code CDSS is required to receive arrest and conviction information that is maintained by the Department of Justice for purposes of performing background checks on applicants for licensure and employees in licensed facilities. Similarly, county welfare departments are authorized to receive this same information as part of their duties to approve relative homes in foster care under Welfare and Institutions Code section 309 and 16504.5. The described practice in the law enforcement PG undercuts any child protection benefit associated with referring the matter to the Department of Justice under Penal Code section 11169 because arrest information is already available to licensing agencies and county relative approval agencies. The county is proposing that the Commission adopt a protocol at a cost of potentially billions in state general fund dollars which undercuts the most salient child protection provisions in CANRA.

This aspect of the PG again illustrates the confusion the county has between its criminal justice functions and the responsibilities created under CANRA. It is treating its investigation associated with the determination of unfounded, inconclusive, and substantiated child abuse that is connected to the affirmative duty to refer to the Department of Justice matters under Penal Code section 11169 and its independent and distinct duties as law enforcement agencies to enforce crimes under the penal code, as one consolidated duty. There is obviously a huge fiscal incentive for the county to pursue this strategy. But by doing so, the county has effectively distorted the meaning and purposes of CANRA to such an extent that the program and child safety benefits of maintaining the CACI are flushed into oblivion. The critical issue for the Commission that is presented by this claim in regards to the issue of investigations is what investigatory activities are required in order to fulfill the requirements of Penal Code section 11169.

The county on the other hand has presented the Commission with a proposal which answers the question of what investigative duties exist to fulfill their responsibility to prove the commission of felonies and misdemeanors. This proposal should be rejected by the Commission.

Conclusion

Based on the foregoing, it is clear that an affirmative duty for local law enforcement to investigate reports of child abuse exists only in the narrow requirement specified in Penal Code section 11165.14. But because the legislature did not specify what activities were required in those investigations, and because the investigative steps any law enforcement takes in any particular investigation are discretionary, there are no specific activities required that the Commission can base a cost to.

For the balance of investigative activities outside of Penal Code section 11165.14, there is no mandate for investigations, and there are no activities for which the county is legally entitled to receive reimbursement for. Even if one could discern an investigative mandate in CANRA beyond Penal Code section 11165.14, one cannot discern the specific activities required to be performed under this supposed mandate. CANRA does not provide these steps. Nor has the Department of Justice who is the agency responsible for administration of CANRA. Accordingly, even if the Commission determines that CANRA contains reimbursable mandates for investigations, it should determine that the county is entitled to no reimbursement for CANRA related investigative activities because no specific investigative activity is mandated under law or regulation promulgated by the Department of Justice. The decision by an investigator to perform any particular investigative step is discretionary.

Finally, should the Commission determine that investigations are mandated under CANRA, and that certain investigatory steps are sufficiently described in law or regulations so as to warrant a finding that certain investigative steps are appropriate for reimbursement, it should not extend that finding beyond the specific investigatory steps CDSS requires County Welfare Departments to conduct in its child abuse emergency response regulations. (See 4, below) If those rules provide for investigative steps that meet the supposed investigation requirements set forth in CANRA, it cannot be also said that the tasks performed beyond that associated with the patrol officer duties are required by CANRA.

4. The County's Claim for County Welfare Department Costs.

Unlike the law enforcement's claim which lacked any statutory or regulatory structure supporting its claim for an extensive list of investigative activities, for county welfare departments CDSS has a regulatory structure which specifies investigative activities, which is found in MPP 31-101 through 135. The existence of regulated investigative steps however does not mean that those steps are required by CANRA. In fact, CANRA is not even cited as authority for CDSS child abuse investigative regulations. The statutes cited by CDSS in its abuse report investigation regulations are sections 10553, 10554, 16208, 16501(f), and 16504 of the Welfare and Institutions Code. Welfare and Institutions Code section 10553 is a general provision which relates to the power of CDSS pertaining to the administration of public social services. Welfare and Institutions Code section 10554 is a general provision that authorizes CDSS to promulgate regulations. Welfare and Institutions Code section 16208 requires CDSS to develop statewide emergency response protocols. There is nothing in this section that refers to CANRA.

Welfare and Institutions Code section 16501(f) is a substantive statute which describes child welfare services and which imposes a duty on counties to provide child welfare services. This law describes child welfare services to include emergency response, and services to at-risk children, among other requirements. Finally, Welfare and Institutions Code section 16504 requires county welfare departments to maintain an emergency response system in accordance with regulations issued by CDSS. Both Welfare and Institutions Code sections 16501 and 16504 represent the substantive legal foundation for CDSS' regulations relating to child abuse investigations, not CANRA. The investigative activities performed by county social workers under CDSS' regulations are exclusively and totally connected with duties established by the legislature under the Welfare and Institutions Code, not CANRA. Accordingly, costs for these activities are not related to the claim in this matter.

5. Humphries

The Ninth Circuit Court of Appeals in the Humphries case did establish a right to due process for individuals listed on the CACI by law enforcement. However, it did not establish what process was due. It is premature therefore to speculate on what activities or costs are associated with this requirement. Despite this decision, we are not aware of any example to date of law enforcement providing due process to an individual whose name is listed on CACI by law enforcement. Given the county's proposed construct for law enforcement investigations in its PG, which consolidates its criminal law enforcement role with its duties under CANRA, it is difficult to imagine how law enforcement will propose to conduct the due process in Humphries and avoid wholesale contamination of its criminal case. There are two options here. It could consolidate the Humphries due process with the criminal trial. This would be very difficult, and legal principles of res judicata and collateral

estoppel could play a significantly detrimental role in the prosecution of persons accused of child abuse related crimes. Alternatively, the county could establish the protocol of referring the matter to the Department of Justice after the patrol officer completes his or her activities. This would reduce the impact of the matter on the criminal prosecution, and would allow for the proper and timely submission of information to the Department of Justice for listing on the CACI. In any event, not only are there no activities proffered by the county in this regard, the duties imposed by Humphries are not legislative mandates, and accordingly are not the subject of reimbursement as a mandate claim.

Respectfully Submitted,



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c. Agenda Mailing List.