

**ITEM 7**  
**PROPOSED STATEMENT OF DECISION**  
**AND**  
**PARAMETERS AND GUIDELINES**

Penal Code sections 11165.9, 11166, 11166.2, 11166.9,<sup>1</sup> 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

*Interagency Child Abuse and Neglect Investigation Reports*  
00-TC-22

County of Los Angeles, Claimant

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LAO Publication: State-Local Working Group Proposal to Improve the Mandates Process

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Webster's New International Dictionary, Excerpts

LAO Analysis of 1991 Realignment

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code Section 11161.7), 11169, and 11170

Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1991, Chapter 132; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219, 346 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; Statutes 2000, Chapters 287 and 916;

California Code of Regulations, Title 11, Sections 901, 902 and 903; Department of Justice Forms SS 8572 (“Suspected Child Abuse Report”) and ; SS 8583 (“Child Abuse Investigation Report”);

Filed on June 29, 2001,

By County of Los Angeles, Claimant.

Case No.: 00-TC-22

*Interagency Child Abuse and Neglect  
Investigation Reports*

STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

(Adopted on December 6, 2007)

**STATEMENT OF DECISION**

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on December 6, 2007. Sergeant Dan Scott, of the County of Los Angeles Sheriff’s Department, and Leonard Kaye appeared on behalf of the claimant, County of Los Angeles. Susan Geanacou and Carla Castañeda appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the modified staff analysis to partially approve this test claim at the hearing by a vote of 7 to 0.

### **Summary of Findings**

The County of Los Angeles filed a test claim on June 29, 2001, alleging that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or CANRA. As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. The index is now used by government agencies conducting background checks on individuals who will interact with children in employment or volunteer settings.

A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. Claimant alleges that all of these changes have imposed a reimbursable state-mandated program.

Initially, Department of Finance (DOF) and the Department of Social Services (DSS) both opposed the test claim, arguing that the claim alleges duties of law enforcement and child protective services that were required by prior law. Where the state agencies acknowledge that some new duties may have been imposed, they contend that adequate funding has already been provided to counties as part of the joint federal-state-local funding scheme for child welfare. At the test claim hearing on December 6, 2007, DOF stated agreement with the staff analysis.

The Commission finds that the test claim statutes and executive orders have created numerous new local duties for reporting child abuse to the state, as well as record-keeping and notification activities that were not required by prior law, thus mandating a new program or higher level of service.

At this time, there is no evidence in the record to demonstrate that the mandated activities have been offset or funded by the state or federal government in a manner and amount "sufficient to fund the cost of the state mandate." On the contrary, Welfare and Institutions Code section 10101 indicates that "the state's share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program, or the amount appropriated by the Legislature for that purpose, whichever is less." Conversely, counties must have a share of costs for child welfare services of at least 30 percent of the nonfederal expenditures. In addition, there is no evidence that the counties are required to use the funds identified for the costs of mandated activities.

Therefore, the Commission finds that Government Code section 17556, subdivision (e) does not apply to disallow a finding of costs mandated by the state, but that all claims for reimbursement for the approved activities must be offset by any program funds already received from non-local sources.

## **Conclusion**

The Commission concludes that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903, and “Child Abuse Investigation Report” Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

### ***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, § 11168, formerly § 11161.7.)

### ***Reporting Between Local Departments***

#### **Accepting and Referring Initial Child Abuse Reports when a Department Lacks 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, § 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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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, § 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, § 11166, subd. (h), now subd. (j).)

*A county welfare department shall:*

- Report by telephone immediately, or as soon as practically possible, 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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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, § 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, § 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 practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions 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 section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 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 was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)

- 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, 2006, 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, § 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 reported 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, § 11166, subs. (h) and (i), now subs. (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 reports, 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 licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee 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 report and 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, § 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, § 11166.9, subd. (k), now § 11174.34, subd. (k).)

*A county welfare department shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 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, § 11166.9, subd. (l), now § 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, § 11166.9, subd. (I), now § 11174.34, subd. (I).)

***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 neglect 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, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 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, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 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, § 11169, 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, § 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, § 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 reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall

include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now 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, § 11170, subd. (b)(6)(A), now (b)(8)(A).)

*Any city or county law enforcement agency, county probation department, or county welfare department shall:*

- 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, § 11170, subd. (c).)

### ***Record Retention***

*Any city or county police or sheriff's department, or 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 §§ 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, § 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 a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 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, § 11169, subd. (c).)

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

## BACKGROUND

This test claim alleges that amendments to California’s mandatory child abuse reporting laws impose a reimbursable state-mandated program. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed “mandated reporters”), and in 1980, California reenacted and substantively amended the law, entitling it the “Child Abuse and Neglect Reporting Act,” sometimes referred to as “CANRA.”

The court in *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, pages 258-260, provides an overview of the complete Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq. (footnotes omitted):

The law is designed to bring the child abuser to justice and to protect the innocent and powerless abuse victim. (See Comment, *Reporting Child Abuse: When Moral Obligations Fail* (1983) 15 Pacific L.J. 189.) The reporting law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. (*Id.*, at pp. 189-190.) Physical abuse, sexual abuse, willful cruelty, unlawful corporal punishment and neglect must be reported.

¶...¶

The reporting law applies to three broadly defined groups of professionals: “health practitioners,” child care custodians, and employees of a child protective agency. “Health practitioners” is a broad category subdivided into “medical” and “nonmedical” practitioners, and encompasses a wide variety of healing professionals, including physicians, nurses, and family and child counselors. (§§ 11165, subs. (i), (j); 11165.2.) “Child care custodians” include teachers, day care workers, and a variety of public health and educational professionals. (§§ 11165, subd. (h); 11165.1 [first of two identically numbered sections]; 11165.5.) Employees of “child protective agencies” consist of police and sheriff’s officers, welfare department employees and county probation officers. (§ 11165, subd. (k).)

The Legislature acknowledged the need to distinguish between instances of abuse and those of legitimate parental control. “[T]he Legislature recognizes that the reporting of child abuse ... involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child ... . [I]t is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline.” (Stats. 1980, ch. 1071, § 5, p. 3425.)

To strike the “delicate balance” between child protection and parental rights, the Legislature relies on the judgment and experience of the trained professional to distinguish between abusive and nonabusive situations. “[A]ny child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment *whom he or*

*she knows or reasonably suspects has been the victim of child abuse* shall report the known or suspected instance of child abuse to a child protective agency .... ‘[R]easonable suspicion’ means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, *drawing when appropriate on his or her training and experience*, to suspect child abuse.” (§ 11166, subd. (a), italics added.) As one commentator has observed, “[t]he occupational categories ... are presumed to be uniquely qualified to make informed judgments when suspected abuse is not blatant.” (See Comment, *Reporting Child Abuse: When Moral Obligations Fail*, *supra.*, 15 Pacific L.J. at p. 214, fn. omitted.)

The mandatory child abuse report must be made to a “child protective agency,” i.e., a police or sheriff’s department or a county probation or welfare department. The professional must make the report “immediately or as soon as practically possible by telephone.” The professional then has 36 hours in which to prepare and transmit to the agency a written report, using a form supplied by the Department of Justice. The telephone and the written reports must include the name of the minor, his or her present location, and the information that led the reporter to suspect child abuse. (§§ 11166, subd. (a); 11167, subd. (a); 11168.) Failure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a \$1,000 fine. (§ 11172, subd. (e).)

The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff’s department, and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney. (§ 11166, subd. (g).) Initial reports are confidential, but may be disclosed to anyone involved with the current investigation and prosecution of the child abuse claim, including the district attorney who has requested notification of any information relevant to the reported instance of abuse. (§ 11167.5.)

A child protective agency receiving the initial child abuse report then conducts an investigation. The Legislature intends an investigation be conducted on every report received. The investigation should include a determination of the “person or persons apparently responsible for the abuse.” (Stats. 1980, ch. 1071, § 5, pp. 3425-3426.) Once the child protective agency conducts an “active investigation” of a report and determines that it is “not unfounded,” the agency must forward a written report to the Department of Justice, on forms provided by the department. (§§ 11168, 11169.) An “unfounded” report is one “which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse as defined in Section 11165.” (§ 11165.6, subd. (c)(2).)

The Department of Justice retains the reports in a statewide index, a computerized data bank known as the “Child Abuse Central Registry,” which is to be continually updated and “shall not contain any reports that are determined to be unfounded.” (§ 11170, subd. (a).) If a child protective agency subsequently

determines that a report is “unfounded,” it must so inform the Department of Justice who shall remove the report from its files. (§ 11169.)

The reports in the registry are not public documents, but may be released to a number of individuals and government agencies. Principally, the information may be released to an investigator from the child protective agency currently investigating the reported case of actual or suspected abuse or to a district attorney who has requested notification of a suspected child abuse case. Past reports involving the same minor are also disclosable to the child protective agency and the district attorney involved or interested in a current report under investigation. In addition, future reports involving the same minor will cause release of all past reports to the investigating law enforcement agencies. (§§ 11167.5, subd. (b)(1); 11167, subd. (c); 11170, subd. (b)(1).)

As part of the earlier versions of California’s mandated reporting laws, a Child Abuse Centralized Index has been operated by the Department of Justice (DOJ) since 1965.<sup>1</sup> In addition, in January 1974, Congress enacted the federal “Child Abuse Prevention and Treatment Act,” known as CAPTA (Pub.L. No. 93-247). This established a federal advisory board and grant funding for states with comprehensive child abuse and neglect reporting laws. This law has been continually reenacted and currently provides grant funds to all eligible states and territories for child abuse and neglect reporting, prevention, and treatment programs.<sup>2</sup>

### **Claimant’s Position**

The County of Los Angeles’s June 29, 2001<sup>3</sup> test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, and related DOJ regulations and forms, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege that the test claim statutes and executive orders imposed new activities on the claimant in the following categories:

1. Program Implementation
2. Initial Case Finding and Reporting
3. Taking and Referring Reports
4. Cross-Reporting and District Attorney Reporting
5. Investigation and File Queries, Maintenance
6. Child Abuse Central Index Reporting
7. Notifications

The filing includes declarations of representatives from the County of Los Angeles Department of Children and Family Services, the District Attorney’s Office, and the Sheriff’s Department.

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<sup>1</sup> Former Penal Code section 11165.1, as amended by Statutes 1974, chapter 348.

<sup>2</sup> 42 United States Code section 5106a.

<sup>3</sup> The potential reimbursement period begins no earlier than July 1, 1999, based upon the filing date for this test claim. (Gov. Code, § 17557.)

Claimant filed comments on September 7, 2007, expressing agreement with the draft staff analysis findings and conclusions, and attaching exhibits related to the county's implementation of the program.

### **Department of Finance Position**

In comments filed December 10, 2001, DOF alleges the test claim does not meet filing standards, stating that “[t]he claimant has failed to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by [Commission regulations.]”

Addressing the substantive issues raised, DOF argued that no reimbursable state-mandated program has been imposed by any of the test claim statutes or executive orders. DOF asserted that the claim “attempts to characterize as “new duties” many of the long-standing statutory obligations of local law enforcement, probation, and child protective agencies to receive and refer reports concerning allegations of child abuse.”

DOF also contended that “[a]rticle XIII B, section 6 requires subvention only when the costs in question can be recovered *solely* from local tax revenues. [footnote (fn): *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.] The Child Welfare Program, of which child protective services are a part, is funded by a combination of federal, state and local funds. [fn: Welfare and Institutions Code § 10101, Exhibit 4, attached.]” DOF argued that because of this joint funding, “the test claim legislation is not subject to state subvention.”

On July 20, 2007, DOF filed a response to Commission staff's request for additional information to address the assertion that the test claim activities have been funded. DOF's response included a CD containing pages from the Budget Act regarding Item 5180-151-0001, and DSS County Fiscal Letters, from fiscal year 1999-2000 through 2006-2007. This filing is discussed further at Issue 3 below.

On September 12, 2007, DOF filed comments on the draft staff analysis stating concurrence with the recommendation to partially approve the test claim, but concluding that if the analysis is approved by the Commission, “the claimant's statements that the activities have neither been offset or funded by the state or federal government must be fully substantiated.”

### **Department of Social Services Position**

DSS's comments on the test claim filing, submitted December 10, 2001, conclude that for any new activities alleged “no additional reimbursement is warranted. The existing funding scheme adequately reimburses local government for costs associated with the delivery of child welfare services which includes the provision of services and level of services mandated under current law.” DSS's comments regarding specific test claim activities will be addressed in the analysis below.

## **COMMISSION FINDINGS**

The courts have found that article XIII B, section 6, of the California Constitution<sup>4</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>5</sup> “Its

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<sup>4</sup> Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>6</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>7</sup> In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>8</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>9</sup> To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.<sup>10</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>11</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>12</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>13</sup> In making its

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program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>5</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>6</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>7</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>8</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>9</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

<sup>10</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>11</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

<sup>12</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>14</sup>

**Issue 1: What is the scope of the Commission’s jurisdiction on this test claim?**

DOF challenged the sufficiency of the test claim pleadings in their comments filed December 10, 2001. Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the claimant is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim. At the time of the test claim filing on June 29, 2001, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:<sup>15</sup>

All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:

- (1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

The regulation also required copies of all “relevant portions of” law and “[t]he specific chapters, articles, sections, or page numbers must be identified,” as well as a detailed narrative describing the prior law and the new program or higher level of service alleged.

The test claim cover pages list “Penal Code Part 4, Title 1, Chapter 2, Article 2.5: The Child Abuse and Neglect Report Act, as Specified, and as Added or Amended by Chapter 1071, Statutes of 1980 and Subsequent Statutes, Including Penal Code Section 11168, and as Including Former Penal Code Section 11161.7, Amended by Chapter 958, Statutes of 1977.” The title pages also include specific references to three regulations and two state forms, pled as executive orders.

The Commission identifies specific allegations in the test claim narrative or in the claimant’s rebuttal comments filed February 15, 2002, regarding Penal Code sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168, 11169, and 11170, as added or amended by Statutes 1980, chapter 1071, through amendments by Statutes 2001, chapter 916. The test claim allegations also include former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958, as it was later incorporated into Penal Code section 11168. The claim alleges reimbursable costs are imposed on the county Department of Children and Family Services, the District Attorney’s Office, and the Sheriff’s

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<sup>13</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>14</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>15</sup> The required contents of a test claim are now codified at Government Code section 17553.

Department. The Commission takes jurisdiction over these statutes and code sections, along with the executive orders pled, and these will be analyzed below for the imposition of a reimbursable state mandated program.

In addition, San Bernardino Community College District filed interested party comments on the draft staff analysis on September 7, 2007, requesting that the test claim findings be made for the legal requirements “for all police departments and law enforcement agencies, and not exclude school district police departments without a compelling reason.” On December 5, 2007, a request was received from DOF to postpone the hearing on *ICAN* until a final decision is reached in *Department of Finance v. Commission on State Mandates*, [California Court of Appeal Case No. C056833 (POBOR)]. In order to allow the County of Los Angeles claim to move forward on the December 6, 2007 hearing agenda, the test claim statutes and executive orders pled in 00-TC-22, as they may apply to other types of local governmental entities, were severed and consolidated with another pending test claim, *Child Abuse and Neglect Reporting*, 01-TC-21, filed by the San Bernardino Community College District. Therefore, *this* statement of decision is limited to findings for cities and counties.

**Issue 2: Do the test claim statutes and executive orders mandate a new program or higher level of service on cities and counties within the meaning of article XIII B, section 6 of the California Constitution?**

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by local government.<sup>16</sup> Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task, or result in “a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.”<sup>17</sup>

The test claim allegations will be analyzed by areas of activities, as follows: (a) mandated reporting of child abuse and neglect (b) distributing the Suspected Child Abuse Report Form; (c) reporting between local departments; (d) investigation of suspected child abuse, and reporting to and from the state Department of Justice; (e) notifications following reports to the Child Abuse Central Index; and (f) record retention. The prior law in each area will be identified.

***(A) Mandated Reporting of Child Abuse and Neglect***

***Penal Code Section 11166, Subdivision (a):***

Penal Code section 11166,<sup>18</sup> subdivision (a), as pled, provides that “a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his

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<sup>16</sup> *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

<sup>17</sup> California Constitution, article XIII B, section 6, subdivision (c).

<sup>18</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992,

or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.” Penal Code section 11165.9 requires reports be made “to any police department, sheriff’s department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department.”

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes 1974, chapter 348, required specified medical professionals, public and private school officials and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department;<sup>19</sup> or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

The list of “mandated reporters,” as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,<sup>20</sup> includes all of the original reporters and now also

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chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

<sup>19</sup> Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

<sup>20</sup> Added by Statutes 2000, chapter 916.

includes: teacher's aides and other classified school employees; county office of education employees whose employment requires regular child contact; licensing workers; peace officers and other police or sheriff employees; firefighters; therapists; medical examiners; animal control officers; film processors; clergy and others.

The Commission finds that the duties alleged are not required of local entities, but of mandated reporters as individual citizens. The statutory scheme requires duties of individuals, identified by either their profession or their employer, but the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources. Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:<sup>21</sup>

Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that fine and punishment.

Failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated reporter to criminal liability. This criminal penalty applies to mandated reporters as individuals and does not extend to their employers. In addition, under Penal Code section 11172, mandated reporters are granted immunity as individuals for any reports they make: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and *this immunity shall apply even if* the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect *outside of his or her professional capacity or outside the scope of his or her employment.*" [Emphasis added.] Therefore, the Commission finds that the duties are required of mandated reporters as individuals, and Penal Code section 11166, subdivision (a), does not mandate a new program or higher level of service on local governments for the activities required of mandated reporters.

Definitions of Child Abuse and Neglect: Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

Penal Code section 11165.6,<sup>22</sup> as pled, defines "child abuse" as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1<sup>23</sup>), neglect (§ 11165.2<sup>24</sup>), willful cruelty or unjustifiable punishment (§ 11165.3<sup>25</sup>),

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<sup>21</sup> This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

<sup>22</sup> As repealed and reenacted by Statutes 2000, chapter 916.

<sup>23</sup> Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287. Derived from former Penal Code section 11165 and 11165.3.

<sup>24</sup> Added by Statutes 1987, chapter 1459. Derived from former Penal Code section 11165.

<sup>25</sup> Added by Statutes 1987, chapter 1459.

unlawful corporal punishment or injury (§ 11165.4<sup>26</sup>), and abuse or neglect in out-of-home care (§ 11165.5<sup>27</sup>).

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program. While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with the other test claim statutes, they mandate a new program or higher level of service by increasing the “scope of child abuse and neglect that is initially reported to child protective services,”<sup>28</sup> as suggested by the claimant.

Former Penal Code section 11161.5 mandated child abuse reporting when “the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor.” The prior law of Penal Code section 273a<sup>29</sup> follows:

(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

The Commission finds that the definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law

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<sup>26</sup> Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

<sup>27</sup> Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

<sup>28</sup> Test Claim Filing, page 13.

<sup>29</sup> Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the penalties amended, but the description of the basic crime of child abuse and neglect remains good law at Penal Code section 273a.

also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

The Commission finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled. Even though the definitions have been rewritten, in *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, the Court stated a fundamental rule of statutory construction: “‘Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....’” [Citation omitted.] That purpose is not necessarily to change the law. ‘While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.’” The Commission finds that the same acts of abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law.

Penal Code section 11165.1 provides that “sexual abuse,” for purposes of child abuse reporting, includes “sexual assault” or “sexual exploitation,” which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and “obscene sexual conduct.” Prior law required reporting of “sexual molestation,” as well as “unjustifiable physical pain or mental suffering.”

“Sexual molestation” is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone “who annoys or *molests* any child under the age of 18.” In a case regularly cited to define “annoy or molest,” *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

The primary purpose of the above statute is the ‘protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.’ (*People v. Moore, supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words ‘annoy’ and ‘molest’ are synonymously used (Words and Phrases, perm. ed., vol. 27, ‘molest’); they generally refer to conduct designed ‘to disturb or irritate, esp. by continued or repeated acts’ or ‘to offend’ (Webster’s New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to ‘offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.’ (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation which is forbidden is ‘not concerned with the state of mind of the child’ but it is ‘the objectionable acts of defendant which constitute the offense,’ and if his conduct is ‘so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would ‘annoy or molest’ within the purview of’ the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

By use of the general term “sexual molestation” in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of “offenses against children, [with] a connotation of abnormal sexual motivation.” Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that “neglect,” as used in the Child Abuse and Neglect Reporting Act, includes situations “where any person having care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered,” “including the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care.” Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child “in such situation that its person or health may be endangered,” as described in prior law, above. Thus the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where “[a]ny person ... willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering.” The current definition of “willful cruelty or unjustifiable punishment of a child,” found at Penal Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.<sup>30</sup>

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits “any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.” Again, prior law required reporting of any non-accidental injuries, “willful cruelty,” and “unjustifiable physical pain or mental suffering,” which encompasses all of the factors described in the definition for reportable “unlawful corporal punishment or injury.” The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines “abuse or neglect in out-of-home care” as all of the previously described definitions of abuse and neglect, “where the person responsible for the child’s welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency.” Prior law required reporting of abuse by “any person,” and neglect by anyone who had a role in the care of the child.<sup>31</sup> Thus any abuse reportable under section 11165.5, would have been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to “abuse or neglect in out-of-home care” from the general definition of “child abuse and neglect” at Penal Code section 11165.6.

Therefore, the Commission finds that Penal Code sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service by increasing the scope of child abuse and neglect reporting.

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<sup>30</sup> Penal Code section 273a distinguishes between those “circumstances or conditions likely to produce great bodily harm or death” (felony), and those that are not (misdemeanor).

<sup>31</sup> *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: “No special meaning attaches to this language [care or custody] “beyond the plain meaning of the terms themselves. The terms ‘care or custody’ do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver.” (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)”

Penal Code Section 11165.7:

The claimant also requests reimbursement for training mandated reporters. The test claim filing, at page 43, makes the following allegation (all brackets are in the claimant's original text):

Mandated reporters [Section 11165.7] report child abuse [as defined in Section 11165.6] that is suspected [Section 11166(a)] and such reporters are required to undergo training in accordance with Section 11165.7 subdivisions (c) and (d):

“(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.”

Claimant's quote of Penal Code section 11165.7,<sup>32</sup> subdivisions (c) and (d) is accurate, as amended by Statutes 2000, chapter 916. Penal Code section 11165.7, subdivision (a), is the list of professions that are mandated reporters; subdivision (b), as pled, provided that volunteers who work with children “are encouraged to obtain training in the identification and reporting of child abuse.”

The specific language regarding training in the test claim statute refers to school districts.<sup>33</sup> A separate test claim was filed for training activities on this same code section by San Bernardino Community College District on behalf of school districts. This will be heard by the Commission at a separate hearing: *Child Abuse and Neglect Reporting* (01-TC-21). The analysis for Penal Code section 11165.7 in this test claim is limited to cities and counties.

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<sup>32</sup> Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, and Statutes 2000, chapter 916.

<sup>33</sup> Although this is addressed in more detail in the 01-TC-21 test claim, some history of Penal Code section 11165.7 is helpful to put the training language into legislative context. Prior to amendment by Statutes 2000, chapter 916, subdivision (a) did not provide the complete list of mandated reporters, but instead defined the term “child care custodian” for the purposes of the Child Abuse and Neglect Reporting Act. The definition provided that a “child care custodian” included “an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; [and] a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education.” All other categories of “child care custodian” defined in former Penal Code section 11165.7, including teachers, child care providers, social workers, and many others, were not dependent on whether the individual had received training on being a mandated reporter.

The Commission finds, based on the plain meaning of the statute,<sup>34</sup> that there is no express duty in the test claim statute for local agencies, as employers or otherwise, to provide training to mandated reporters in child abuse identification and reporting. Rather, as described in *Planned Parenthood, supra*, 181 Cal.App.3d 245, 259, at footnote 4: “[t]he Legislature has enacted numerous provisions to ensure these occupational categories [mandated reporters] receive the necessary training in child abuse detection. (See, e.g., Bus. & Prof. Code, §§ 28, 2089, 2091.)” So, while the Business and Professions Code requires that specific professionals, including psychologists, clinical social workers, marriage and family therapists, physicians, and surgeons, receive training on mandated child abuse reporting as part of their initial licensing and continuing education requirements, the training is not required to be provided by local agency employers pursuant to the test claim statutes.<sup>35</sup> Therefore, the Commission finds that Penal Code section 11165.7, subdivisions (c) and (d), does not mandate a new program or higher level of service on local agencies for training mandated reporters.

***(B) Distributing the Suspected Child Abuse Report Form:***

*Penal Code Section 11168, Including Former Penal Code Section 11161.7, and the “Suspected Child Abuse Report” Form SS 8572:*

Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

The 1980 reenactment of the child abuse reporting laws moved the provision to Penal Code section 11168,<sup>36</sup> which now requires:

The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be distributed by the agencies specified in Section 11165.9.

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<sup>34</sup> “If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs.” (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

<sup>35</sup> The activity of training on the requirements of the Child Abuse and Neglect Reporting Act, is one that, while not explicitly required by the plain language of the statute, may be found to be one “of the most reasonable methods of complying with the mandate” during the parameters and guidelines part of the test claim process. California Code of Regulations, title 2, section 1183.1, subdivision (a)(4), requires the parameters and guidelines to contain a description of the reimbursable activities, including “those methods not specified in statute or executive order that are necessary to carry out the mandated program.”

<sup>36</sup> As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

The Commission finds that agencies specified in section 11165.9 did not have a duty to distribute the state-issued “Suspected Child Abuse Report” (Form SS 8572), or any other child abuse reporting form, prior to Statutes 1977, chapter 958. Therefore, the Commission finds that Penal Code section 11168, as pled, mandates a new program or higher level of service, as follows:

*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.

***(C) Reporting Between Local Departments***

***Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:  
Penal Code Section 11165.9:***

Penal Code section 11165.9,<sup>37</sup> as pled, requires:

Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department, sheriff’s department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

As discussed above, the prior law of Penal Code section 11161.5, subdivision (a), required the mandated reporters to report child abuse “by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or in the alternative, either to the county welfare department, or to the county health department.”

Thus, police, sheriff’s, probation, and county health and welfare departments were required to accept mandated child abuse reports under prior law;<sup>38</sup> however, one aspect of Penal Code section 11165.9 creates a new duty. Now, local police, sheriff’s, probation or county welfare departments, *even when they lack jurisdiction* over the reported incident “shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency” unless they take action to immediately transfer the telephone call to the proper agency. Otherwise, they must accept the report, and then forward it “immediately” by telephone, fax or electronic transmission to the proper agency. Prior law placed the burden solely on the mandated reporter to file the report with an agency with proper jurisdiction. With the change made by Statutes 2000, chapter 916, a local police, sheriff’s, probation or county welfare department with improper jurisdiction must take affirmative steps to accept and refer a

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<sup>37</sup> As added by Statutes 2000, chapter 916. Derived from former Penal Code section 11165.

<sup>38</sup> Former Penal Code section 11161.5, subdivision (a).

child abuse report, rather than simply telling a caller that they have contacted the wrong department. Therefore, the Commission finds that Penal Code section 11165.9, as added by Statutes 2000, chapter 916, mandates a new program or higher level of service, as follows:

*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.

*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:*

*Penal Code Section 11166, Subdivision (h):*<sup>39</sup>

Penal Code section 11166, subdivision (h), as pled, requires reporting from the county probation or welfare departments to the law enforcement agency with jurisdiction, and to the district attorney's office. The law requires county welfare or probation departments to report by telephone, fax or electronic transmission "every known or suspected instance of child abuse or neglect" to the law enforcement agency with jurisdiction, the local agency responsible for investigation of Welfare and Institutions Code section 300 cases (such as a child protective services department), and to the district attorney's office. There is an exception to reporting cases to law enforcement and the district attorney when they only involve general neglect, or an inability to provide "regular care due to the parent's substance abuse." If an initial telephone report is made, a written report by mail, fax or electronic transmission must follow within 36 hours.

Statutes 2000, chapter 916, operative January 1, 2001, modified the reporting requirements by allowing the initial reports to be made by fax or electronic means, rather than initially by telephone. Thus, there is now the option of meeting the mandate requirements in a single step if the initial report is made by fax or electronic transmission. Statutes 2005, chapter 713, operative January 1, 2006, following the filing of the test claim, made the same change for reports from law enforcement agencies. This statute also re-lettered the subdivisions from (h) to (j).

The prior law of former section 11161.5, subdivision (a), required "cross-reporting" by county welfare or health departments to the local police authority with jurisdiction and juvenile probation departments, as follows:

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report

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<sup>39</sup> Subsequent amendments (not pled) re-lettered subdivision (h). The subdivision is now lettered (j). For consistency with the pleadings, the subdivision will be referred to as (h) in the discussion.

without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

Thus, prior law did require county welfare departments to file a report of suspected child abuse or neglect “with the local police authority with jurisdiction,” “without delay.”<sup>40</sup> However, all of the other local child abuse cross-reporting duties were added by Statutes 1980, chapter 1071, or in later amendments.

The Commission finds that Penal Code section 11166<sup>41</sup> mandates a new program or higher level of service on county probation and welfare departments for the following activities, as of the beginning of the reimbursement period, July 1, 1999:

*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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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.
- 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.

*A county welfare department shall:*

- Report by telephone immediately, or as soon as practically possible, 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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to

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<sup>40</sup> A common definition of the word “immediately,” which is used in the current statute, is “without delay,” which is used in the prior law. (American Heritage Dict. (4th ed. 2000).)

<sup>41</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

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."

- 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.

*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:*

*Penal Code Section 11166, Subdivision (i):*<sup>42</sup>

Penal Code section 11166, subdivision (i) provides the requirement that law enforcement agencies must relay known or suspected child abuse and neglect reports by telephone to the Welfare and Institutions Code section 300 agency for the county, and to the district attorney's office, with an exception for reporting cases of general neglect to the district attorney. The law enforcement agency must also cross-report to the county welfare department all reports of suspected child abuse or neglect alleged to have occurred as a result of the action of a person responsible for the child's welfare. A written report by mail, fax or electronic transmission must follow any telephone report within 36 hours.

Statutes 2000, chapter 916, operative January 1, 2001, modified the reporting requirements by allowing the initial reports to be made by fax or electronic means, rather than initially by telephone. Thus, there is now the option of meeting the mandate requirements in a single step if the initial report is made by fax or electronic transmission. Statutes 2005, chapter 713, operative January 1, 2006, following the filing of the test claim, made the same change for reports from law enforcement agencies. This statute also re-lettered the subdivisions from (i) to (k).

The Commission finds that Penal Code section 11166, subdivision (i)<sup>43</sup> mandates a new program or higher level of service on city and county law enforcement agencies for the following activities, as of the beginning of the reimbursement period, July 1, 1999:

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<sup>42</sup> Subsequent amendments (not pled) re-lettered subdivision (i). The subdivision is now lettered (k). For consistency with the pleadings, the subdivision will be referred to as (i) in the discussion.

<sup>43</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

*A city or county law enforcement agency shall:*

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions 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 section 11165.2, subdivision (b), which shall be reported only to the county welfare department.
- 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 was in danger of abuse.
- 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, 2006, 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.

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

*Penal Code Section 11166, Subdivisions (h) and (i):*

The claimant also alleges that Penal Code section 11166, by requiring cross-reporting of suspected child abuse to the district attorney, imposes a consequential "duty of the District Attorney to receive, monitor or audit those reports."<sup>44</sup> The activity of "receiving" the suspected child abuse reports on the part of the district attorney is one that is implicit as a reciprocal duty in response to the requirement that law enforcement, probation and county welfare departments provide such reports. Therefore, the Commission finds that Penal Code section 11166 also mandates a new program or higher level of service, as follows:

*A district attorney's office shall:*

- Receive reports of every known or suspected instance of child abuse reported 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).

The test claim includes a declaration from the Los Angeles County District Attorney's Office, stating that the agency "is required to audit each case so reported and ensure that, pursuant to the test claim legislation, appropriate investigative agency's reports are completed by these agencies." As described by the California Supreme Court in *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451, "[t]he prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek." The test claim statutes have not altered that level of independence, nor has the plain meaning of the test claim statutes required any new duties of the district attorney's office to monitor or audit the reports received. To the

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<sup>44</sup> Claimant's February 15, 2002 Comments, page 14.

extent that such follow-up activities are necessary, they are part of the prosecutor's ordinary, discretionary, duty to determine whom and what to charge, as described in the *Dix* case.

Therefore, the Commission finds that the activities of monitoring and auditing the suspected child abuse reports, as alleged, are not required by the plain meaning of the test claim statutes, and they do not mandate a new program or higher level of service upon the district attorney's office.

Reporting to Licensing Agencies:  
Penal Code Section 11166.2:

Penal Code section 11166.2,<sup>45</sup> as pled, "any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone to the appropriate licensing agency" when suspected child abuse or neglect "occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person." In addition, the reporting agency "shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information." Finally, the reporting "agency shall send the licensing agency a copy of its investigation report and any other pertinent materials."

Statutes 2001, chapter 133, operative July 31, 2001, following the filing of the test claim, modified the reporting requirements by allowing agencies to make the initial reports by fax or electronic means, rather than initially by telephone. Thus, reporting agencies now have the option of meeting the mandate requirements in a single step if they make the initial report by fax or electronic transmission.

No cross-reports were required to be made to community care licensing or other licensing agencies under prior law. Therefore, the Commission finds Penal Code section 11166.2 mandates a new program or higher level of service, for the following new activity:

*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:*

- 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 licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee 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 report and 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.

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<sup>45</sup> As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

Additional Cross-Reporting in Cases of Child Death:  
Penal Code Section 11166.9, Subdivisions (k) and (l):

Claimant also alleges in comments filed on February 15, 2002, at page 17, that new activities were required when Penal Code section 11166.9 was amended by Statutes 1999, chapter 1012, adding subdivisions (k) and (l).<sup>46</sup> Previously the code section addressed the statewide effort to identify and address issues related to child deaths, but did not require any mandatory activities of local government.

With the amendment by Statutes 1999, chapter 1012, Penal Code section 11166.9, subdivision (k) requires “Law enforcement and child welfare agencies 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.”

In addition, pursuant to subdivision (l), the county child welfare department must also create a record in a state reporting system regarding the case of a child death. Therefore, the Commission finds that Penal Code section 11166.9, subdivisions (k) and (l), mandates a new program or higher level of service, for the following new activities:

*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.

*A county welfare department shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.
- 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.
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.

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<sup>46</sup> As added by Statutes 1992, chapter 844 and amended by Statutes 1995, chapter 539; Statutes 1997, chapter 842; Statutes 1999, chapter 1012; Statutes 2000, chapter 916. This code section has since been renumbered Penal Code section 11174.34, by Statutes 2004, chapter 842, without amending the text. For consistency with the pleadings, the section will be referred to as 11166.9 in the discussion.

***(D) Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice***

Penal Code Sections 11165.12, 11166, Subdivision (a), 11169, Subdivision (a), and 11170; and the Automated Child Abuse Reporting System (ACAS): California Code of Regulations, Title 11, Sections 901, 902, and 903; and the “Child Abuse Investigation Report” Form SS 8583:

Penal Code section 11169, subdivision (a),<sup>47</sup> as pled, requires “[a]n agency specified in section 11165.9,” to forward a written report to DOJ, by mail, fax or electronic transmission “of every case it investigates of known or suspected child abuse or neglect which is determined not to be unfounded,” other than cases of general neglect. The reports are required to be in a form approved by DOJ.

Penal Code section 11165.12<sup>48</sup> provides the definitions of unfounded, substantiated and inconclusive reports. Each requires a determination “by the investigator who conducted the investigation.” Unfounded reports -- those which have been found following an active investigation to be false, inherently improbable, the result of an accidental injury, or otherwise not satisfying the statutory definition of child abuse and neglect -- are not to be reported to DOJ. Thus, only substantiated and inconclusive reports are to be forwarded to DOJ, pursuant to section 11169, subdivision (a), as described above.

California Code of Regulations, title 11, section 901, provides definitions for the Automated Child Abuse System, or ACAS. Section 902 states the purpose of ACAS “as the index of investigated reports of suspected child abuse received,” and is a reference file “used to refer authorized individuals or entities to the underlying child abuse investigative files maintained at the reporting CPA.”<sup>49</sup> The Commission finds that California Code of Regulations, title 11, sections 901 or 902, do not require any activities that are not otherwise described in statute, and thus do not mandate a new program or higher level of service.

Penal Code section 11169, subdivision (a) provides that “[t]he 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.” California Code of Regulations, title 11, section 903, designates the current form SS 8583 as “the standard reporting form for submitting summary reports of child abuse to DOJ,” and describes mandatory information which must be included on the form “in order for it to be considered a “retainable report” by DOJ and entered into ACAS.”

The prior law, former Penal Code section 11161.5, subdivision (a), required all written child abuse reports received by the police to be forwarded to the state, as follows:

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<sup>47</sup> As added by Statutes 1980, chapter 1071 and amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916.

<sup>48</sup> As added by Statutes 1987, chapter 1459 and amended by Statutes 1990, chapter 1330, Statutes 1997, chapter 842, and Statutes 2000, chapter 916.

<sup>49</sup> “CPA” refers to “child protective agency,” which is defined in California Code of Regulations, title 11, section 901, subdivision (f), as referring back to the agencies listed in Penal Code section 11165.9.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice.

Thus, prior law only required a local police authority that received a written report of child abuse to forward a copy of the report to the state, as received.

The claimant further alleges that “investigation” is newly required by the test claim statutes and regulations, in order to complete Form SS 8583, pled as an executive order, for submittal to DOJ. The state agencies dispute that investigation is a new activity. DSS, in comments filed December 10, 2001, states: “Department staff believes that the requirement for the county welfare department to conduct an independent investigation in response to allegations of abuse and neglect is not a newly imposed duty.” Neither DSS nor DOJ’s comments cite any provision of law demonstrating that independent investigation of child abuse reports was required by prior law.

Claimant correctly cites the 1999 *Alejo v. City of Alhambra* appellate court decision,<sup>50</sup> in which the court found that the duty to investigate reports of suspected child abuse and neglect is mandatory. The *Alejo* case concerned a claim of “negligence per se” against the city and the individual police officer for failing to investigate a report from a father that his three-year-old son was being physically abused by the mother’s live-in boyfriend. The negligence per se doctrine is used to litigate situations where a violation of a statute or regulation ultimately leads to an injury of a type that the law was intended to prevent. In this case, the court found that the police violated a statute that required the investigation of child abuse reports, which led to the three-year-old child being further abused by the mother’s boyfriend. First, the court determined that the police have no general duty to investigate individual reports of child abuse or neglect:

We acknowledge, as a general rule one has no duty to come to the aid of another. (*Williams v. State of California* (1983) 34 Cal.3d 18, 23 [192 Cal.Rptr. 233, 664 P.2d 137].) Accordingly, there is no duty owed by police to individual members of the general public because “[a] law enforcement officer’s duty to protect the citizenry is a general duty owed to the public as a whole.” (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1121 [222 Cal.Rptr. 239].) Therefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection. (*Id.* at p. 1122.)<sup>51</sup>

Since the court determined that the police have a general duty to protect the public at large, but not a duty to protect specific individuals in the absence of another statute, the opinion then examines whether any specific statute was violated by the police for failing to investigate the report of child abuse. The court determined that Penal Code section 11166, subdivision (a), “creates such a duty.”<sup>52</sup>

As we read section 11166, subdivision (a), it imposes two mandatory duties on a police officer who receives an account of child abuse.

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<sup>50</sup> *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180.

<sup>51</sup> *Id.* at page 1185.

<sup>52</sup> *Ibid.*

Although section 11166, subdivision (a) does not use the term “investigate,” it clearly envisions some investigation in order for an officer to determine whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the county welfare department and the district attorney under section 11166, subdivision (i) and to the *Department of Justice under section 11169, subdivision (a)*. The latter statute provides in relevant part: “A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded .... A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12.” An “unfounded” report is one “which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse, as defined in Section 11165.6.” (§ 11165.12, subd. (a).) “Child abuse” is defined in section 11165.6 as “a physical injury which is inflicted by other than accidental means on a child by another person.”

¶...¶

Contrary to the city’s position, the duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe’s position would have suspected such abuse. The language of the statute, prior cases and public policy all support this conclusion.<sup>53</sup>

Thus, the court finds that the test claim statutes do mandate investigation, and the Commission must follow this statement of law when reaching its conclusions in this test claim. However, the court was not examining the law from a mandates perspective, and made the finding based on current law. For its purposes, the court had no need to determine whether the earlier versions of the child abuse reporting law initially created the duty to investigate.

The investigation activity identified in the test claim is one that is necessary in order to complete the state “Child Abuse Investigation Report” Form SS 8583. Penal Code section 11169, subdivision (a), as added by Statutes 1980, chapter 1071, and substantively amended by Statutes 1985, chapter 1598, provides that the “agency specified in Section 11165.9” must first conduct an active investigation to determine whether the child abuse or severe neglect “report is not unfounded” before sending a completed report form to the state.<sup>54</sup> No earlier statutes required any determination of the validity of a report of child abuse or neglect before completing a child abuse investigative report form and forwarding it to the state. Therefore, the Commission finds that an investigation sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, as defined by Penal Code section 11165.12, is newly mandated by Penal Code section 11169, subdivision (a), as described by the court in *Alejo*.<sup>55</sup>

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<sup>53</sup> *Id.* at pages 1186-1187. [Emphasis added.]

<sup>54</sup> Penal Code section 11169.

<sup>55</sup> *Alejo v. City of Alhambra, supra*, 75 Cal.App.4th 1180, 1186.

The Commission finds that Penal Code section 11169, subdivision (a), the California Code of Regulations, title 11, section 903, and the state “Child Abuse Investigation Report” Form SS 8583, mandate a new program or higher level of service, as follows:

*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 neglect 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.
- 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.

***(E) Notifications Following Reports to the Child Abuse Central Index***

*Penal Code Section 11169, Subdivision (b):*

Penal Code section 11169, subdivision (b), as amended by Statutes 2000, chapter 916, for the first time requires that when “an agency specified in section 11165.9,” forwards a report of suspected child abuse or neglect to DOJ:

the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

DSS’s December 10, 2001 comments concur with the claimant that written notification is a new activity, but disputes the claim for reimbursement based upon the existing funding scheme. DOF’s comments on the test claim filing similarly acknowledge “that this particular requirement was added to the child abuse reporting scheme after 1975, and that it may result in trace cost increases to the claimant,” but concludes that such costs are subject to a federal-state-local funding ratio and “not subject to state subvention.”

The Commission finds that the statute requires an entirely new duty that was not mandated by prior law. Therefore, the Commission finds that the plain language of Penal Code section 11169, subdivision (b), mandates a new program or higher level of service, for the following new activity:

*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.

The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

Penal Code Section 11170:

Penal Code section 11170<sup>56</sup> describes the duties of the DOJ to maintain the Child Abuse Central Index and make reports available. It refers to reports made pursuant to Penal Code section 11169. As described above, Penal Code section 11169 requires reports to be made by “an agency specified in Section 11165.9.” When “submitting agency,” “investigating agency” or similar terms are used in Penal Code section 11170, the statute refers back to the agencies that submitted the initial Child Abuse Investigation Reports pursuant to section 11169—which in turn are the agencies identified in Penal Code section 11165.9.

The pre-1975 law of former Penal Code section 11161.5 provided that if the DOJ records resulted in reports or information being returned to the reporting agency, the reports received were required to be made available to specified individuals “having a direct interest in the welfare of the minor” and others, including probation and child welfare departments, as follows:

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

Penal Code section 11170, subdivision (b)(1), requires that after information is received by “an agency that submits a report pursuant to Section 11169” from the DOJ “that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency,” “[t]he agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem” or appointed counsel, “or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.” While the requirement is similar to prior law, there was no duty in prior law for the reporting agency to make reports and information available to the child custodian, guardian ad litem, appointed counsel or licensing agency. Therefore, the Commission finds that Penal Code section 11170, subdivision (b)(1) mandates a new program or higher level of service for the following activity:

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<sup>56</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

*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:*

- 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.

Another new provision, Penal Code section 11170, subdivision (b)(2) creates a duty for the agency that investigated a mandated report of child abuse to report back to the mandated reporter on the conclusion of the investigation. Penal Code section 11170, subdivision (b)(2) refers to the investigating agency of a report made pursuant to Penal Code section 11166, subdivision (a), which in turn requires mandated reports be made to agencies specified in section 11165.9. There was no duty in prior law for agencies listed in 11165.9 to provide such information, therefore, the Commission finds that Penal Code section 11170, subdivision (b)(2), mandates a new program or higher level of service for the following activity:

*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:*

- 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.

Penal Code section 11170, subdivision (b)(5), now numbered (b)(6),<sup>57</sup> requires the DOJ to make information available to “investigative agencies or probation officers, or court investigators” “responsible for placing children or assessing the possible placement of children” regarding any known or suspected child abusers residing in the home. When such information is received by an investigating agency, the statute requires that the agency notify the person that they are in the Child Abuse Central Index. There was no duty in prior law for the investigating agency to provide such information; therefore, the Commission finds that Penal Code section 11170, subdivision (b)(5), now (b)(6), mandates a new program or higher level of service for the following activity:

*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 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 reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report.

Claimant alleges that there is a new program or higher level of service required by Penal Code section 11170, subdivision (b)(6)(A), now renumbered (b)(8)(A).<sup>58</sup> The subdivision, as pled,

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<sup>57</sup> This subdivision was renumbered by Statutes 2004, chapter 842.

<sup>58</sup> This subdivision was renumbered by Statutes 2004, chapter 842.

provides that an investigating party, including any agency named in section 11169 that is required to make reports to the Child Abuse Central Index (these are the agencies receiving child abuse and neglect reports pursuant to section 11165.9), as well as district attorney's offices, and county licensing agencies, that receives information from the state Child Abuse Central Index is:

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.

The Commission finds that the words "responsible for" in this statute are vague and ambiguous, and may be interpreted alternatively as either mandatory (e.g. "investigators *shall obtain* the original report,") or discretionary, (e.g. if the investigator finds it necessary for the investigation, they are to obtain the original report from the local reporter, rather than from the state.) Therefore it is necessary to look at extrinsic evidence of legislative intent.<sup>59</sup> The statutory language was added by Statutes 1990, chapter 1330 (Sen. Bill No. (SB) 2788), as double joined with Statutes 1990, chapter 1363 (Assem. Bill No. (AB) 3532.) The legislative history for SB 2788 yields a reading of "responsible for" as a mandatory term. Specifically, the Assembly Public Safety Committee, Republican Analysis, (Reg. Sess. 1989-1990) on SB 2788, version dated August 28, 1990, states:

this bill would *require* any appropriate person or agency responsible for child care oversight to, upon notification that a report exist[s], seek the original information pertaining to the incident and make an independent decision on the merits of the report for investigation, prosecution or licensure determination. [Emphasis added.]<sup>60</sup>

Therefore, the Commission finds that Penal Code section 11170, subdivision (b)(6)(A), now (b)(8)(A), mandates a new program or higher level of service, as follows:

*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, county licensing agency, or district attorney's office shall:*

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<sup>59</sup> "Because the words themselves provide no definitive answer, we must look to extrinsic sources." *People v. Woodhead* (1987) 43 Cal.3d 1002, 1008.

<sup>60</sup> The court in *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31, "set forth a list of legislative history documents that have been recognized by the California Supreme Court or this court as constituting cognizable legislative history," including reports of the Assembly Committee on Public Safety (*supra* at p. 33.)

Further, although an author's letter to the Governor is not a reliable form of legislative history on its own, Sen. Newton R. Russell's August 31, 1990 letter to the Governor is consistent with the committee analysis cited above: "SB 2788 will also insert language stating that all authorized persons and agencies, if conducting either child abuse or child care licensing investigation, and having access to information from the CACI, are required to obtain, and make independent conclusions from, the original child abuse report." [Emphasis in original.]

- 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.

Penal Code section 11170, subdivision (c) requires that the DOJ provide information from the Child Abuse Central Index “to any agency responsible for placing children pursuant to ...the Welfare and Institutions Code,” section 305 et seq., “upon request,” when relevant to a child’s potential “placement with a responsible relative pursuant to” Welfare and Institutions Code sections 281.5, 305, and 361.3.

Welfare and Institutions Code section 305 et seq. refers to temporary custody and detention of dependent children. Welfare and Institutions Code section 281.5 refers to placement by a probation officer; section 305 refers to temporary custody by “any peace officer”;<sup>61</sup> and section 361.3 concerns placement with a relative by “the county social worker and court.” Thus, when any law enforcement agency, probation department, or child welfare department receives information regarding placement of a child with a relative from DOJ, as described in Penal Code section 11170, subdivision (c), the agency receiving the information is statutorily obligated to notify the individual “that he or she is in the index.” There was no duty in prior law to provide such information; therefore, the Commission finds that Penal Code section 11170, subdivision (c), mandates a new program or higher level of service for the following activity:

*Any city or county law enforcement agency, county probation department, or county welfare department shall:*

- 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.

Also, the claimant, at page 34 of the test claim filing, alleges that Penal Code section 11170, subdivision (d) requires that the claimant “provide certain information when necessary for out-of-state law enforcement agencies.” The Commission finds that the subdivision is directed solely to “the department,” which, when used through the rest of section 11170, refers to the state Department of Justice. The context of subdivision (d) does not suggest a different usage was intended.<sup>62</sup> Therefore the Commission finds that Penal Code section 11170, subdivision (d), does not mandate a new program or higher level of service.

Similarly, claimant alleges a mandate from Penal Code section 11170, subdivision (e), which provides that an individual may make a request to DOJ to “determine if he or she is listed in the

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<sup>61</sup> Peace officers are defined at Penal Code section 830 et seq.

<sup>62</sup> “Terms ordinarily possess a consistent meaning throughout a statute.” *People v. Standish* (2006) 38 Cal.4th 858, 870.

Child Abuse Central Index.” If they are listed, DOJ is required to provide “the date of the report and the submitting agency.” Then “[t]he requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (a) of Section 11167.5.” Penal Code section 11167.5 indicates that reports are available pursuant to the Public Records Act (Gov. Code, § 6250, et seq.) The duties expressed in Penal Code section 11170, subdivision (e) are imposed on the state or individuals; any related activities for local governments are required by prior law, specifically Government Code section 6253 of the Public Records Act, not the test claim statutes. Therefore, the Commission finds that Penal Code section 11170, subdivision (e), does not mandate a new program or higher level of service.

***(F) Record Retention***

*Penal Code Section 11169, Subdivision (c):*

Penal Code section 11169, subdivision (c), requires:

Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

The time for retention of records on the Child Abuse Central Index is controlled by Penal Code section 11170,<sup>63</sup> as follows:

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

Reading the two sections together, the record retention period for each of the underlying local investigatory files is a minimum of 10 years, much longer if a subsequent report on the same suspected child abuser is received during the 10 year period. DSS and DOF dispute the claim for mandate reimbursement for record retention activities. DSS asserts that the duty to retain the child protective agency’s investigative file documenting each investigation is not a new duty, citing Welfare and Institutions Code section 10851 and regulatory requirements for three years

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<sup>63</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

of records retention.<sup>64</sup> DOF also cites the pre-existing three-year record retention requirement, and concludes that “the longer retention requirement for child abuse investigation records imposes no new costs, and may in fact avoid the costs of record destruction. Finally, if the records are stored electronically, a longer retention period should result in no additional costs whatsoever.” The Commission notes that the Welfare and Institutions Code record retention requirement is only applicable to public social services records. Records required to be held by city police and county sheriff’s departments are only subject to the more general Government Code sections 26202 and 34090, which allow counties and cities, respectively, to authorize destruction of records after two years.

Statutes 1997, chapter 842 added the records retention requirements to Penal Code sections 11169 and 11170, resulting in a longer records retention period than otherwise required by prior law; thus mandating a higher level of service. Therefore, the Commission finds that Penal Code section 11169, subdivision (c) mandates a new program or higher level of service, for the following:

*Any city or county police or sheriff’s department, or 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 §§ 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.

*A county welfare department shall:*

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 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.

**Issue 3: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?**

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of \$200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564.

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<sup>64</sup> DSS also cites the record retention requirement for juvenile courts (Welf. & Inst. Code, § 826), but it is irrelevant to the test claim allegations which address the records of the investigating agency, not those of the courts.

The only Government Code section 17556 exception that may apply to this test claim with respect to counties is subdivision (e), which provides, that “[t]he commission shall not find costs mandated by the state,” if:

...

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

Both DSS and DOF’s December 10, 2001 comments assert that there are state funds available that can be used for new state-mandated child abuse reporting-related activities. However, neither letter was specific in stating what funds were available for the activities.

On May 9, 2007, Commission staff requested that the state agencies provide additional information in this regard, to “identify what funds have been appropriated and allocated to each county for child abuse and neglect reporting and investigation services.” On July 20, 2007, DOF filed a response to the request, stating that:

Counties receive allocations from: 1) Title IV-E federal funds, 2) Temporary Assistance for Needy Families (TANF) block grants, 3) Title XIX Funds, 4) Title XX Funds, 5) Title IV-B Funds, and 6) the General Fund. Funds are appropriated in the annual Budget Act under Item 5180-151-0001. Additionally, transfer authority exists in other budget items that may be used for activities associated with ICAN. Attached for your reference is a compact disc (CD) containing the Budget Act appropriations (Item 5180-151-0001) for fiscal years 1999-2000 through 2006-2007. The sections contain the funds appropriated for Department of Social Services’ local assistance programs. Please note that these appropriations do not specify the multiple programs or specific activities that may be funded with the appropriation.

The following describes the purpose of the various funds allocated to the counties.

- General Fund appropriations are used to match Title IV-E funds based on the 70/30 (state/county) share of nonfederal funds. Title IV-E funds and General Fund appropriations are also used to provide “augmentation funds” to counties beyond the predetermined formulas based on caseload. Augmentation funding occurs when a county has spent its share and additional money is needed to support County Welfare Services (CWS) programs.
- TANF funds and county funds pay for emergency assistance, including investigation and crisis resolution activities performed by social workers.
- Title IV-B funds are used to provide services and support to preserve families, protect children, and prevent child abuse and neglect.
- Title IV-E funds can be used for case management and emergency assistance activities as well as training and professional development of a child welfare workforce. These funds are budgeted based on a county welfare department’s

caseload and the number of social worker staff and clerical staff, using the specific county's salaries, benefits, and associated overhead costs.

- Title XIX funds are used for medical care assistance of CWS programs.
- Title XX funds are used to provide for more flexibility in the delivery of child welfare services. These funds are not used for medical care or employee wages.

DOF's CD also includes copies of the DSS County Fiscal Letters from 1999-2000 through 2006-2007, as well as a table summarizing county welfare funding for those fiscal years.

Despite all of the documentation provided, there is no evidence in the record to demonstrate that the mandated activities have been offset or funded by the state or federal government in a manner and amount "sufficient to fund the cost of the state mandate." On the contrary, Welfare and Institutions Code section 10101 indicates that "the state's share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program or the amount appropriated by the Legislature for that purpose, whichever is less." Conversely, counties must have a share of costs for child welfare services of at least 30 percent of the nonfederal expenditures. Even the augmentation funds are only available, according to DOF's letter, "when a county has spent *its share* and additional money is needed." In addition, the funding information is limited to county welfare departments and does not include costs incurred by local law enforcement, when they perform the mandated activities identified.

DOF's December 10, 2001 comments cite the *County of Fresno, supra*, 53 Cal.3d. at page 487, to conclude that because test claim activities are jointly funded, "the test claim legislation is not subject to state subvention." The *County of Fresno* decision addressed a challenge to the constitutionality of Government Code section 17556, subdivision (d), which provides an exception to a finding of costs mandated by the state when the local government may pay for the new activities through service charges, fees, or assessments. In determining that the limit expressed by subdivision (d) was constitutional, the California Supreme Court stated that "the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes." However, contrary to DOF's suggestion, the *County of Fresno* decision does not apply as this test claim does not have facts addressing available fees, service charges, or assessments for mandatory child abuse reporting.

Government Code section 17556, subdivision (e) requires that there must be "no net costs," or appropriated funds must be "*specifically intended* to fund the costs of the state mandate in an *amount sufficient* to fund the cost of the state mandate." To interpret the law as the December 10, 2001 state agency comments urge would render much of the language of Government Code section 17556, subdivision (e) meaningless. The Commission finds that section 17556, subdivision (e) does not apply to disallow a finding of costs mandated by the state, but that all claims for reimbursement for the approved activities must be offset by any program funds already received and applied to the program from non-local sources. There is no evidence that the counties are required to use the funds identified by DOF for the expenses of the mandated activities.

Thus, for the activities listed in the conclusion below, the Commission finds that the new program or higher level of service also imposes costs mandated by the state within the meaning

of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

## CONCLUSION

The Commission concludes that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903, and “Child Abuse Investigation Report” Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

### ***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, § 11168, formerly § 11161.7.)<sup>65</sup>

### ***Reporting Between Local Departments***

#### **Accepting and Referring Initial Child Abuse Reports when a Department Lacks 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, § 11165.9.)<sup>66</sup>

#### **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

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<sup>65</sup> As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958.

<sup>66</sup> As added by Statutes 2000, chapter 916, operative January 1, 2001.

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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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, § 11166, subd. (h), now subd. (j).)<sup>67</sup>

- 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, § 11166, subd. (h), now subd. (j).)<sup>68</sup>

*A county welfare department shall:*

- Report by telephone immediately, or as soon as practically possible, 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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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, § 11166, subd. (h), now subd. (j).)<sup>69</sup>

- 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, § 11166, subd. (h), now subd. (j).)<sup>70</sup>

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<sup>67</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

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 practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions 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 section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>71</sup>
- 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 was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>72</sup>
- 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, 2006, 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, § 11166, subd. (i), now subd. (k).)<sup>73</sup>

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 reported 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, § 11166, subs. (h) and (i), now subs. (j) and (k).)<sup>74</sup>

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<sup>71</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

### Reporting to Licensing Agencies:

*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:*

- 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 licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee 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 report and 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, § 11166.2.)<sup>75</sup>

### 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, § 11166.9, subd. (k), now § 11174.34, subd. (k).)<sup>76</sup>

*A county welfare department shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)<sup>77</sup>
- 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, § 11166.9, subd. (l), now § 11174.34, subd. (l).)<sup>78</sup>
- 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, § 11166.9, subd. (l), now § 11174.34, subd. (l).)<sup>79</sup>

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<sup>75</sup> As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

<sup>76</sup> As amended by Statutes 1999, chapter 1012, operative January 1, 2000. This code section has since been renumbered as Penal Code section 11174.34, without amendment, by Statutes 2004, chapter 842.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

***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 neglect 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, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)<sup>80</sup>
- 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, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)<sup>81</sup>

***Notifications Following Reports to the Child Abuse Central 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, § 11169, subd. (b).)<sup>82</sup>
- 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, § 11170, subd. (b)(1).)<sup>83</sup>

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<sup>80</sup> Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Regulation as filed and operative July 17, 1998.

<sup>81</sup> *Ibid.*

<sup>82</sup> As amended by Statutes 1997, chapter 842, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

<sup>83</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986,

- 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, § 11170, subd. (b)(2).)<sup>84</sup>
- 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 reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)<sup>85</sup>

*Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office 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, § 11170, subd. (b)(6)(A), now (b)(8)(A).)<sup>86</sup>

*Any city or county law enforcement agency, county probation department, or county welfare department shall:*

- 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, § 11170, subd. (c).)

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chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

<sup>84</sup> *Ibid.*

<sup>85</sup> As amended by Statutes 1997, chapter 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. This subdivision was renumbered by Statutes 2004, chapter 842.

<sup>86</sup> *Ibid.*

## ***Record Retention***

*Any city or county police or sheriff's department, or 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 §§ 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, § 11169, subd. (c).)<sup>87</sup>

*A county welfare department shall:*

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 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, § 11169, subd. (c).)<sup>88</sup>

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

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<sup>87</sup> As amended by Statutes 1997, chapter 842.

<sup>88</sup> *Ibid.*



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

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January 21, 2010

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



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](mailto:lkaye@auditor.lacounty.gov).

Very truly yours,

Wendy L. Watanabe  
Auditor-Controller

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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] provisions<sup>1</sup>. 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.

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<sup>1</sup> 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 requirements<sup>2</sup>.

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] staff<sup>3</sup>.

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’<sup>4</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> 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].

<sup>4</sup> 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 agency<sup>5</sup>. 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.

Law Enforcement RRM

The County’s law enforcement RRM is 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#)

<sup>5</sup> 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 times<sup>6</sup> 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

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<sup>6</sup> 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 14<sup>th</sup> 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](http://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 14<sup>th</sup> 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 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. (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 reported 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.

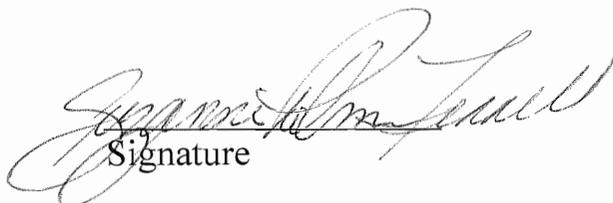
I declare that I met and conferred with law enforcement officials throughout the State as well as staff representing State associations in developing a survey instrument to derive standard times in performing ICAN steps encompassed within each of the four scenarios, detailed in Exhibit 2.

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
<b>TOTALS FOR LEVEL 1</b>	<b>29</b>	<b>110</b>

#### 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)
<b>TOTALS FOR LEVEL 2</b>	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
<b>TOTALS FOR LEVEL 3</b>	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
<b>TOTALS FOR LEVEL 4</b>	<b>3,453</b>	<b>2,162</b>

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 syndrome<sup>6</sup>, 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

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<sup>6</sup> "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.**

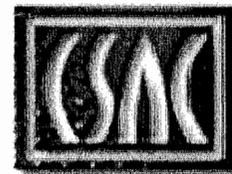
## **Child Death Investigations**

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](mailto: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](mailto: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.

<b>Steps or Activities: (Enter added tasks)</b>	<b>Class Code</b>	<b>Min Time</b>	<b>Max Time</b>	<b>Average Time</b>
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.

<b>Steps or Activities: (Enter added tasks)</b>	<b>Class Code</b>	<b>Min Time</b>	<b>Max Time</b>	<b>Average Time</b>
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.

<b>Steps or Activities: (Enter added tasks)</b>	<b>Class Code</b>	<b>Min Time</b>	<b>Max Time</b>	<b>Average Time</b>
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.

<b>Steps or Activities: (Enter added tasks)</b>	<b>Class Code</b>	<b>Min Time</b>	<b>Max Time</b>	<b>Average Time</b>
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 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 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.<sup>1</sup> 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.<sup>2</sup> 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

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

<sup>2</sup>These 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.<sup>3</sup>

### **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.

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<sup>3</sup>The 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.)<sup>4</sup>

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).)<sup>5</sup> He or she must follow that up with a written report within 36 hours. (Pen. Code, § 11166, subd. (a).)<sup>6</sup> 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).)<sup>7</sup> If a mandated reporter fails to make a report, however, he or she is subject to misdemeanor penalties. (Pen. Code, § 11166, subd. (b).)

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

<sup>5</sup>The 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, subs. (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).)

<sup>6</sup>A copy of the form used for this purpose is found in Appendix A.

<sup>7</sup>Discretionary 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).)<sup>8</sup> Key to whether an investigation will lead to a report being forwarded to the Index is the determination of whether abuse occurred.<sup>9</sup> 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).)<sup>10</sup> 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).)<sup>11</sup> 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).)

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<sup>8</sup>An “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).

<sup>9</sup>Much 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

<sup>10</sup>Originally 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].)

<sup>11</sup>A 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.<sup>12</sup> 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.<sup>13</sup> 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).)<sup>14</sup>

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<sup>12</sup>DOJ 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.

<sup>13</sup> 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.

<sup>14</sup>Moreover, 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.<sup>15</sup>

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.<sup>16</sup> 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).)

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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).)

<sup>15</sup>There 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.

<sup>16</sup>Civil 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).)<sup>17</sup> 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.<sup>18</sup>

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

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

<sup>18</sup>The 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**

**Reproduced From the Manual  
Investigation and Prosecution of Child Abuse (Second Edition)  
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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

INVESTIGATION AND PROSECUTION OF CHILD ABUSE

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

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

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(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 of 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  
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), 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

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

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,<sup>FN\*</sup> 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.<sup>FN1</sup>

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).<sup>FN2</sup> 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.<sup>FN3</sup> 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.

<sup>FN3</sup>. 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.<sup>FN4</sup> 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.

<sup>FN4</sup>. 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.<sup>FN5</sup> 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.

<sup>FN5</sup>. 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,<sup>FN6</sup> and requiring the arrest records pertaining to that charge be sealed and destroyed.<sup>FN7</sup> 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.”<sup>FN8</sup>

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.<sup>FN9</sup>

<sup>FN9</sup>. 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.<sup>FN10</sup> 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.<sup>FN11</sup>

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).<sup>FN12</sup> 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.”).

<sup>FN12</sup>. 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.<sup>FN13</sup> 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**.<sup>FN14</sup> 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.

<sup>FN14</sup>. 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.<sup>FN15</sup> 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.

<sup>FN15</sup>. 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.

*Humphries v. County of Los Angeles*

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Daily Journal D.A.R. 704, 2009 Daily Journal D.A.R.  
1537

END OF DOCUMENT

## Kaye, Leonard

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**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

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**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; cstrobela@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
<b>2008-09</b>					
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
<b>FY TOTAL</b>	<b>178,321</b>	<b>511,600</b>	<b>336,110</b>	<b>294,227</b>	<b>556,091</b>
<b>FY AVERAGE</b>	<b>14,860</b>	<b>42,633</b>	<b>28,009</b>	<b>24,519</b>	<b>46,341</b>
<b>2009-10</b>					
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
<b>FY TOTAL</b>	<b>179,248</b>	<b>507,379</b>	<b>343,310</b>	<b>291,267</b>	<b>531,303</b>
<b>FY AVERAGE</b>	<b>14,937</b>	<b>42,282</b>	<b>28,609</b>	<b>24,272</b>	<b>44,275</b>

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
<b>2007-08</b>					
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
<b>FY TOTAL</b>	<b>170,915</b>	<b>502,362</b>	<b>322,328</b>	<b>309,650</b>	<b>607,459</b>
<b>FY AVERAGE</b>	<b>14,243</b>	<b>41,863</b>	<b>26,861</b>	<b>25,804</b>	<b>50,622</b>

<b>2008-09</b>					
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
<b>FY TOTAL</b>	<b>168,348</b>	<b>506,896</b>	<b>329,163</b>	<b>319,876</b>	<b>580,910</b>
<b>FY AVERAGE</b>	<b>14,029</b>	<b>42,241</b>	<b>27,430</b>	<b>26,656</b>	<b>48,409</b>

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
<b>2006-07</b>					
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
<b>FY TOTAL</b>	<b>182,869</b>	<b>480,650</b>	<b>312,846</b>	<b>297,773</b>	<b>634,318</b>
<b>FY AVERAGE</b>	<b>15,239</b>	<b>40,054</b>	<b>26,071</b>	<b>24,814</b>	<b>52,860</b>
<b>2007-08</b>					
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
<b>FY TOTAL</b>	<b>180,931</b>	<b>465,261</b>	<b>316,792</b>	<b>302,650</b>	<b>593,352</b>
<b>FY AVERAGE</b>	<b>15,078</b>	<b>38,772</b>	<b>26,399</b>	<b>25,221</b>	<b>49,446</b>

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
<b>2005-06</b>					
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
<b>FY TOTAL</b>	<b>205,640</b>	<b>513,313</b>	<b>305,089</b>	<b>282,789</b>	<b>665,981</b>
<b>FY AVERAGE</b>	<b>17,137</b>	<b>42,776</b>	<b>25,424</b>	<b>23,566</b>	<b>55,498</b>
<b>2006-07</b>					
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
<b>FY TOTAL</b>	<b>215,828</b>	<b>513,376</b>	<b>306,228</b>	<b>281,603</b>	<b>625,945</b>
<b>FY AVERAGE</b>	<b>17,986</b>	<b>42,781</b>	<b>25,519</b>	<b>23,467</b>	<b>52,162</b>

MONTHLY DATA	EMERGENCY RESPONSE ASSESSMENT	EMERGENCY RESPONSE	FAMILY MAINTENANCE	FAMILY REUNIFICATION	PERMANENT PLACEMENT
<b>2004-05</b>					
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
<b>FY TOTAL</b>	<b>198,972</b>	<b>531,694</b>	<b>295,471</b>	<b>276,565</b>	<b>711,876</b>
<b>FY AVERAGE</b>	<b>16,581</b>	<b>44,308</b>	<b>24,623</b>	<b>23,047</b>	<b>59,323</b>

<b>2005-06</b>					
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
<b>FY TOTAL</b>	<b>209,513</b>	<b>534,409</b>	<b>292,766</b>	<b>272,257</b>	<b>676,617</b>
<b>FY AVERAGE</b>	<b>17,459</b>	<b>44,534</b>	<b>24,397</b>	<b>22,688</b>	<b>56,385</b>

**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.

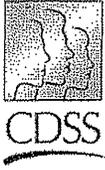
I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

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

Signature



JOHN A. WAGNER  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



ARNOLD SCHWARZENEGGER  
GOVERNOR

March 18, 2010

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,



MARK D. GINSBERG  
Staff Attorney IV  
Legal Division  
California Department of Social Services.

c. Agenda Mailing List.



March 30, 2010

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

Dear Ms. Higashi:

The Department of Finance (Finance) has reviewed the revised proposed parameters and guidelines (Ps & Gs), and the Reasonable Reimbursement Methodology (RRM) component submitted by Los Angeles County (claimant) for Claim No. 00-TC-22 "Interagency Child Abuse and Neglect (ICAN) Investigation Reports." Finance provides the following comments:

The claimant identifies five levels of activities in the RRM and asserts the activities to be statutorily required or necessary to implement the test claim statutes. Finance believes, as does the Department of Social Services (DSS), that the proposed RRM inappropriately includes the totality of its law enforcement response to reports of child abuse, and all activities leading up to a full criminal prosecution. As a result, Finance believes that the activities in levels 3, 4, and 5 of the RRM extend beyond the limited investigation approved in the Statement of Decision (SOD) for the purpose of preparing and submitting Form SS 8583 to the Department of Justice (DOJ).

Similarly, in its 2004 report, the Child Abuse and Neglect Reporting Act (CANRA) Task Force stated that the local law enforcement agency assists Child Welfare Agencies and Child Protection Services with investigations of serious child abuse and neglect to determine whether criminal offenses have occurred that necessitate intervention by the criminal justice system. This statement demonstrates, contrary to the assertions made by the claimant, that the activities in Levels 3, 4, and 5 are not requirements of CANRA but a more extensive investigation needed for the criminal justice system to apprehend and prosecute a criminal and therefore should not be reimbursable.

The DSS is also required, under the test claim statutes, to prepare and submit Form SS 8583 to the DOJ. According to DSS, law enforcement duties should be no more expansive than DSS' duties under CANRA, and only those activities directly related to an investigation conducted to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, should be reimbursable. Finance concurs with DSS and believes that some of the activities in Levels 1 and 2 are sufficient to comply with the mandated reporting requirement.

Finally, Finance recommends the following modifications to the Ps & Gs:

- Section III. Period of Reimbursement

*Remove the sentence "Estimated costs of the subsequent year may be included on the same claim, if applicable."*

- Section 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.~~

- Section IV.A. Actual Costs

*(This section should include standard boilerplate language)*

- Section IV.B. Standard Costs

*(Delete the language in this section and reserved for the agreed upon stipulations of the RRM.)*

- Section IV.C. Reimbursable Activities

The claimant is only allowed to claim and be reimbursed for the reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

One-Time Costs:

- ~~A. Annually, Update Departmental policies and procedures to comply with ICAN requirements.~~
- ~~B. Periodically, Meet and confer with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.~~
- ~~C. Annually, Train ICAN Staff within State Department of Justice (DOJ) on ICAN requirements.~~
- ~~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 cost 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 14<sup>th</sup> Amendment which need which need to be afforded suspects reported to the DOJ's Child Abuse Central Index (CACI).~~
- ~~G. Continuously,~~

Ongoing Costs:

The following reimbursable activities for local agency departments are:

- A. County probation departments, Law enforcement agencies, County welfare departments, and the agency responsible for investigations of suspected child abuse; must provide each other and the district attorney, with written reports if child abuse is suspected.
- B. Accepting and Referring initial Child Abuse Reports between local departments when a department lacks jurisdiction.
- C. Notify suspected child abusers in writing, he or she has been reported to the Child Abuse Central Index (Index). Notify in writing, persons or relatives requesting placement of dependent children, if they are listed in the Index.
- D. Record retention of child abuse or neglect investigative reports that result in a report filed with the DOJ.

(This section includes the list of activities noted in the SOD with the exception of the law enforcement activities identified in the RRM component.)

- Section V. Claim Preparation and Submission

*(This section should contain the standard boilerplate language)*

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your February 10, 2010 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Lorena Romero, Associate Finance Budget Analyst at (916) 445-8913.

Sincerely,



Nona Martinez  
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF JEFF CAROSONE  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM—00-TC-22

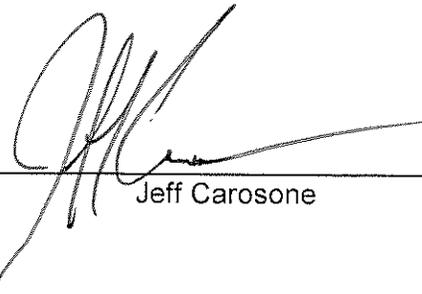
1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

3-30-10

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at Sacramento, CA



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Jeff Carosone

PROOF OF SERVICE

Test Claim Name: Interagency Child Abuse and Neglect Investigation Report  
Test Claim Number: CSM—00-TC-22

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On March 30, 2010, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16  
Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

SB 90 Service  
C/O David M. Griffiths & Associates  
Attention: Mr. Allan Burdick  
4320 Auburn Boulevard, Suite 200  
Sacramento, CA 95841

County of Los Angeles  
Department of Auditor-Controller  
Kenneth Hahn Hall of Administration  
Attention: Mr. Leonard Kaye  
500 West Temple Street, Suite 525  
Los Angeles, CA 90012

County of San Bernardino  
Office of Auditor / Controller / Recorder  
Attention: Ms. Marcia Faulkner  
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San Bernardino, CA 92415 - 0018

Wellhouse and Associates  
Attention: Mr. David Wellhouse  
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Chief Probation Officers of California  
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Ms. Diane Brown  
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Department of Social Services Division  
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Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 26, 2010 at Sacramento, California.

  
\_\_\_\_\_  
Tamara Johnson



**JOHN CHIANG**  
**California State Controller**  
 Division of Accounting and Reporting

April 1, 2010

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

**RE: Revised Proposed Parameters and Guidelines**  
*Interagency Child Abuse and Neglect (ICAN) Investigation Reports, 00-TC-22*  
 Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7,  
 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code  
 Section 11161.7), 11169, and 11170;  
 Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; and Subsequent Statutes  
 Through Statutes 2000, Chapters 287 and 916;  
 California Code of Regulations, Title 11, Sections 901, 902, and 903;  
 Department of Justice Forms SS8572 and SS8583  
 County of Los Angeles, Claimant

Dear Ms. Higashi:

We have reviewed the revised proposed parameters and guidelines for the above named program as communicated by the Commission on February 10, 2010. Comments and recommendations follow; proposed additions are underlined and deletions are indicated with strikethrough:

**I. SUMMARY OF THE MANDATE**

**Page 21** On December 19, 2007 the Commission on State Mandates (Commission) ~~issued~~  
adopted a Statement of Decision [00-TC-22]

**III. PERIOD OF REIMBURSEMENT**

**Page 22** 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...~~

**COMMENT:** Chapter 6, Statutes of 2008 (effective February 16, 2008), eliminated

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the option of filing an estimated reimbursement claim.

#### IV. REIMBURSABLE ACTIVITIES –

**Page 22** To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except where ~~standard cost claiming methodology rates are adopted~~ reasonable reimbursement methodology rates are adopted is permitted as set forth in Section IV B

**COMMENT:** The term “reasonable reimbursement methodology” means a formula for reimbursing local agency and school districts mandated by the state. (GC 17518.5)

**Page 23** **IV B. ~~Standard Costs~~ Reasonable Reimbursement Methodology**

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

#### GENERAL COMMENTS:

The activities specified in Section IV B do not clearly identify the mandated activities in the Statement of Decision adopted by the Commission on December 19, 2007.

- SCO requests these activities with standard times be correlated to the reimbursable activities specified on the Statement of Decision
- The activities need to be segregated between One-time and On-going Activities
- Each activity may contain supervisory review and approval which should not be duplicated in the indirect cost rate
- All reimbursable and non-reimbursable activities should be clearly identified
- SCO is reserving the right to comment on the recommended Reasonable Reimbursement Methodology times established prior to approval

**Page 24** **IV.C. Reimbursable Activities**

Claimants must use ~~a combination of actual cost and or standard cost methodologies~~ reasonable reimbursement methodology rates adopted by the Commission. ~~but should take care to ensure that the same reimbursable activity is not claimed under both methods.~~

**COMMENT:** We recommend that only RRM rate be used if adopted by the Commission.

**Page 25** One-time Activities:

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

Ongoing Activities:

- B. ~~Periodically, Participation~~ in meetings with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.

One-time Activities:

- C. ~~Annually, Develop and~~ 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. (One time per employee)
- D. ~~Periodically, to Develop, update or obtain~~ or procure computer software and ~~obtain~~ equipment necessary for ICAN cross-reporting and reporting to DOJ. Prorate only the costs related to the mandate.

Ongoing Activities:

- E. ~~Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary findings. 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. Gather and evaluate evidence when reasonably necessary to make evidentiary findings on suspects and victims. Victim costs include medical exams for sexual assault and/or physical abuse, mental health exams, and 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.~~

One-time Activities:

- A. ~~Due process costs incurred by law enforcement and county welfare agencies to~~ Develop and maintain ~~establish~~ ICAN due process procedures reasonably necessary to comply with deferral due process procedural protections under the 14<sup>th</sup> Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI].

**COMMENT:** We recommend that reimbursable activities be delineated between One-time and Ongoing Activities.

**Page 26    *Reporting Between Local Departments******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:

- l. Report by telephone, fax or electronic transmission 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 ~~4416.5-11165.6~~ except acts or omissions coming within subdivision 9(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j)).

**Page 27    A county welfare department shall:**

- l. Report by telephone, fax or electronic transmission 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 ~~4416.5-11165.6~~ except acts or omissions coming within subdivision 9(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j)).
7. Send a written report thereof within 36 hours of receiving the information concerning the incident to ~~may~~any agency...

**Page 28    *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:***

7. Report by telephone, fax or electronic transmission immediately, or as soon as practically possible Penal Code section ~~4416.5-11165.6~~ except acts or omissions coming within subdivision 9(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j)).
- l. Send a written report thereof within 36 hours of receiving the information concerning the incident to ~~may~~any agency...

**Page 28    *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 ~~reported~~ reported to law enforcement

**Page 29** *Additional Cross-Reporting in Cases of Child Death:*

*A city or county law enforcement agency shall:*

- ~~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).)~~

**COMMENT:** According to the Statement of Decision adopted on December 19, 2007, this activity is to be performed by the County Welfare Department.

*A county welfare department shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Penal Code section 11166.9, subdivision (k), now section 11174.34, subdivision (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. (Penal Code Section 11166.9, subdivision (l), now section 11174.34, subdivision. (l).)

- Page 30**
- Enter information into the CWS upon notification that the death was subsequently determined not to ~~be~~ be related to child abuse...

**Page 30** *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... filed with the Department of Justice. (Penal Code Section ~~11166.9~~ 11169 subdivision (b)).

- Page 31**
- Notify, in writing, the person listed in the Child Abuse Central Index... The notification shall include the name of the reporting agency and the date of the report. (Penal Code, Section 11170, subdivision (b) (5), now subdivision (b) (6) (7).)

**Page 31** *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... (Penal Code Section 11170, subdivision (b) (6) (A), ~~now (b)(8)(10) (A)~~).

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

**Page 32** *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 investigation reports...for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to GC sections 26202 (cities) and 34090 (counties).)

Please contact Ellen Solis at (916) 323-0698, or Ginny Brummels at (916) 324-0256, if you have any questions.

Sincerely,



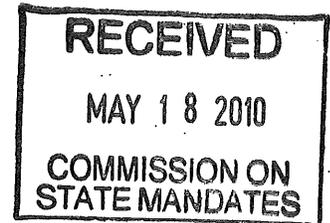
JILL KANEMASU, Chief  
Bureau of Payments

JK/GB/eccs



COUNTY OF LOS ANGELES  
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DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 18th day of May, 2010, I served the attached:

Documents: Los Angeles County's Review of State Agency Comments on its Draft Parameters and Guidelines (Ps&Gs) for the Interagency Child Abuse and Neglect (ICAN) Investigation Reports Test Claim and Revised Ps&Gs and Proposed Time Standards, including a cover letter of Wendy L. Watanabe, narrative, revised Ps&Gs and proposed time standards, and nine Exhibits, now pending before the Commission on State Mandates (00-TC-22).

upon all Interested Parties listed on the attachment hereto and by

- by transmitting via PDF e-mail on the above service date, the document(s) listed above to the Commission on State Mandates and mailing on the above service date the above original-signed documents to Commission's office.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

**PLEASE SEE ATTACHED MAILING LIST**

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of May, 2010, at Los Angeles, California.

Lorraine Hadden

## Commission on State Mandates

Original List Date: 7/6/2001 Mailing Information: Draft Staff Analysis  
Last Updated: 3/22/2010  
List Print Date: 05/13/2010 Mailing List  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

### Related Matter(s)

01-TC-21 Child Abuse and Neglect Reporting

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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**COUNTY OF LOS ANGELES  
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May 17, 2010

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JOHN NAIMO  
JUDI E. THOMAS

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

Dear Ms. Higashi:

**LOS ANGELES COUNTY'S REVIEW OF STATE AGENCY COMMENTS  
REVISED PARAMETERS AND GUIDELINES AND PROPOSED TIME STANDARDS  
INTERAGENCY CHILD ABUSE AND NEGLECT (ICAN) INVESTIGATION REPORTS**

The County of Los Angeles respectfully submits its review of state agency comments on the ICAN parameters and guidelines (Ps&Gs) which was filed with the Commission on January 21, 2010.

A revised set of ICAN Ps&Gs, including a new law enforcement 'reasonable reimbursement methodology', is proposed.

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

Very truly yours,

Wendy L. Watanabe  
Auditor-Controller

WLW:MMO:JN:CY:lk  
H:\SB90\5 15 2010 ICAN Response\cover letter

Enclosure

Executive Summary  
Los Angeles County's Review of State Agency Comments  
Revised Parameters and Guidelines and Proposed Time Standards  
Interagency Child Abuse and Neglect (ICAN) Investigation Reports [00-TC-22]

In California, local agencies respond to approximately 700,000 child abuse referrals a year. In about 24,000 cases, a child abuse report is filed with the State Department of Justice. Under ICAN, the Legislature has devised a State-mandated system to sift through the many referrals to find and protect the abused child.

On December 6, 2007, the Commission on State Mandates approved the County's 'test claim' and found that ICAN mandated local agencies to investigate and report child abuse and that those duties were reimbursable. On January 21, 2010, the County filed 'parameters and guidelines' (Ps&Gs) to specify terms and conditions of reimbursement. These included standard times for computing the costs of repetitive local law enforcement and county welfare agency tasks, permitted under 'reasonable reimbursement methodology' (RRM) provisions.

State agency comments support the concept of using RRM provisions to simplify the process of claiming ICAN costs. Regarding social service costs, there was no objection to the County's proposed RRM. Regarding the law enforcement RRM, the State Department of Finance and the State Department of Social Services objected that the County's RRM included activities that were not necessary in conducting a 'limited investigation'.

The County re-examined its law enforcement RRM and now proposes a streamlined three-tiered classification of required investigations. Those investigations that quickly result in a finding of no child abuse, based on preliminary information, are classified as level 1. These take 102 minutes to complete. Those investigations that result in a finding of no child abuse, but only after a patrol officer investigation, are classified as level 2. These take 268 minutes to complete. Those investigations that result in a finding of reportable child abuse and require an in-depth 'active investigation', are classified as level 3. These take 838 minutes to complete.

The State Controller's Office agreed with the County's proposal to reimburse the costs of reasonably necessary tests and procedures in conducting a level 3 investigation on a case by case basis using the actual cost method.

Los Angeles County's Review of State Agency Comments  
Revised Parameters and Guidelines and Proposed Time Standards  
Interagency Child Abuse and Neglect (ICAN) Investigation Reports [00-TC-22]

This review addresses State agency comments on Los Angeles County's (County) draft ICAN parameters and guidelines (Ps&Gs) filed with the Commission on State Mandates (Commission) on January 21, 2010.

In light of the concerns and findings of the State commentators (discussed below), the County has revised its Ps&Gs, including its law enforcement 'reasonable reimbursement methodology' (RRM). This RRM permits claiming the costs of repetitive law enforcement tasks using statewide standard times.

The County's original social service RRM received no negative comments and so remains unchanged in the (attached) Ps&Gs revision.

Detailed commentary was received from the State Department of Finance (Finance), State Controller's Office (SCO), and State Department of Social Services (SDSS).

A major area of concern was the scope of law enforcement investigation activities in the County's RRM. Finance and SDSS contend that only a 'limited investigation' is required to prepare and submit the Department of Justice (DOJ) reporting form (SS8583), not the 'active investigation' incorporated in the County's RRM.

'Limited Investigations'

Ms. Nona Martinez, Finance's spokesperson, contends that the law enforcement investigation activities that the County lists under level 3 and level 4 are not reimbursable. She maintains that only a 'limited investigation' is required under Commission's ICAN Statement of Decision. She indicates that:

" Finance believes, as does the (State) Department of Social Services (DSS), that the proposed RRM inappropriately includes the totality of its law enforcement response to reports of child abuse, and all activities leading up to a full criminal prosecution. As a result, Finance believes that the activities in levels 3, 4 and 5 of the RRM extend beyond the limited investigation approved in the Statement of

Decision (SOD) for the purpose of preparing and submitting Form SS8583 to the Department of Justice.” (Emphasis added.)

Several corrections are in order.

First, the Commission’s Statement of Decision (SOD), is erroneously cited by Finance. Specifically, on pages 40-41, the SOD indicates that an ‘active’, not a ‘limited’, investigation is required. The SOD also states that an active investigation is “... is necessary in order to complete the state “Child Abuse Investigation Report” Form SS 8583”.

Further, the SOD indicates that the active investigation requirement is “newly mandated” and therefore reimbursable.

In addition, the SOD cautions that an active investigation “... must be sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive”, as defined by Penal Code section 11165.12”.

Therefore, Finance’s assertion that only a limited investigation is required is in error.

Second, level 5 is not part of the RRM. Only levels 1 through 4 are included in the RRM. Level 5 is for extraordinary cases which involve multiple victims and/or suspects. The labor involved in these rare cases is not repetitive and therefore reimbursement for these extraordinary costs was not proposed by the County using a RRM. Rather, reimbursement for these cases is provided for under the actual cost method.

Therefore, Finance is in error in treating Level 5 as part of the RRM.

Regarding the initial child abuse investigation level 1 (110 minutes) and level 2 (268 minutes), Ms Martinez indicates that Finance along with SDSS believes that “... some of the activities in levels 1 and 2 are sufficient to comply with the mandated reporting requirement”.

However, Finance does not indicate which level 1 and 2 activities are sufficient to comply with the mandated reporting requirement. So, no further discussion of this topic is possible.

While Finance and SDSS staff accept level 1 and level 2 investigation activities as reasonably necessary in preparing and submitting Form SS8583 to DOJ, they accept none of the investigation activities in level 3 and level 4 as reasonably necessary.<sup>1</sup>

Here, the County respectfully disagrees.

'Active Investigation'

The County maintains that an 'active investigation' is required before preparing and submitting Form SS8583 to DOJ. In fact, DOJ's instructions on the back of Form SS8583, under "DOJ Reporting", explicitly states that:

"A Form SS8583 must be submitted after an active investigation has been conducted and the incident has been determined not to be unfounded. DOJ defines an "active investigation" as: the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, 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." (Emphasis added.)

Accordingly, the County has included activities in levels 3 and 4 because such activities are reasonably necessary in completely and accurately preparing and submitting a DOJ SS8583 report. The peril of omitting steps necessary for proper reporting is pointed out by Sergeant Daniel Scott, in his declaration (in Exhibit 3). On page 2 he states that:

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<sup>1</sup> But even this limited acceptance is now doubted by SDSS as they subsequently filed a brief with the Commission questioning whether any investigatory steps are reimbursable. In this regard, Mark Ginsberg, with the SDSS Legal Division, argues, on page 12, that "... 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". However, Mr. Ginsberg fails to note that the Commission's decision was based on explicit regulatory language and DOJ's forms which do specify investigatory requirements. Consequently, the Commission found that investigatory activities were reimbursable.

“... the omission of one or more ICAN activities described in Exhibit I 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.”

Now, it is true that an initial allegation of child abuse may only necessitate Level 1 activities where initial review of the SCAR finds no credible evidence that child abuse has occurred. In this instance, 110 minutes was found to be sufficient to close the case.

However, Level 1 may not be sufficient where some credible evidence is found. So the case progresses to Level 2 where a patrol investigation is required. If, after interviewing the child, parents, siblings, witnesses, and suspects, the patrol officer concludes that no child abuse occurred, the case is closed. In this instance, 268 minutes, which includes the time spent in level 1, was found to be sufficient to close the case.

If the case is not closed in Level 2, the case progresses to Level 3 if the child has non-severe medical and mental injuries. The purpose of Level 3 is to continue the investigation to ensure that all the DOJ’ reporting requirements are completely and accurately completed. In this regard, DOJ’s 2005 “Guide to Reporting Child Abuse”, attached to County’s January 14, 2008 filing, states on page 4 that “... an active investigation is critical... in order to comply with the DOJ Regulations, you must complete an active investigation”.

In non-severe child abuse cases, 934 minutes, which includes the time spent on levels 1 and 2, was found to be sufficient to close the case.

In instances of severe child abuse, the case progresses from Level 2 to Level 4. Here, the standard time was found to be 2,162 minutes, which includes the time spent on levels 1 and 2.

Accordingly, the County maintains that, in certain instances, the initial investigation activities found in levels 1 and 2 are sufficient to comply with DOJ’s requirements. In other instances, that require further investigation to completely and accurately prepare and submit a DOJ SS8583 report, the activities found in levels 3 and 4 are necessary.

Los Angeles County Sheriff, Leroy D. Baca, and others<sup>2</sup>, provide an overview of the incidence of child abuse. In this regard, Sheriff Baca notes, on page 2, that:

“In 2001, there were approximately three million reports of child abuse or neglect nationwide. In 2001, California reported that various agencies and private individuals referred 671,422 children for child abuse or neglect investigations in the state.”

Of the total number of children referred for investigation in 2007, Madelyn Childs, DOJ's Program Manager, indicates that only 23,982 of these allegations have resulted in a DOJ SS8583 report<sup>3</sup>. Assuming that the total annual referrals are relatively constant, 1 out of 36 cases (23,982/671,422) necessitated an “active” level 3 or 4 investigation before a DOJ SS8583 report was filed. So the majority of referrals (35/36) may have required a less extensive and expensive level 1 or 2 investigation than the few (1/36) referrals that required a level 3 or 4 investigation.

Accordingly, the Law enforcement RRM envisioned by the County only requires modest time and expense in level 1 or 2 for the majority of referrals and more substantial time and expense in level 3 or 4 for the minority of referrals. In effect, resources are focused on precisely the Legislature's purpose here: protecting children in harm's way.

### Child Protection Agencies

The question arises as to whether law enforcement is functioning under CANRA as a child protection agency or a criminal justice agency. The County follows the ruling in Alejo v. City of Alhambra (75 Cal.App.4<sup>th</sup> 1180, 1187)<sup>4</sup> which indicated that a police officer when functioning under CANRA is “... an employee of a child protection agency”.

However, Finance staff believe that police officers serve a criminal justice function when responding to ‘serious’ child abuse referrals. In this regard, Ms. Martinez,

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<sup>2</sup> In the Journal of Juvenile Law, 2001-2002, ““SILENT SCREAMS” - ONE LAW ENFORCEMENT AGENCY'S RESPONSE TO IMPROVING THE MANAGEMENT OF CHILD ABUSE REPORTING AND INVESTIGATIONS”, by Leroy D. Baca, Paul Jendrucko, Daniel Scott, 2001-2002 La Verne Law Review, Inc, attached to Los Angeles County's. August 30, 2007 filing with the Commission .

<sup>3</sup> See DOJ report data in Exhibit 5.

<sup>4</sup> The Alejo case is attached in Exhibit 7.

Finance's spokesperson, after reading the 2004 Child Abuse and Neglect Reporting Act (CANRA) Task Force Report, maintains that levels 3 and 4 are only necessary when the officer is to perform criminal justice functions<sup>5</sup>. She indicates that:

"... the law enforcement agency assists Child Welfare agencies and Child Protective Services with investigations of serious child abuse and neglect to determine whether criminal offenses have occurred that necessitate intervention by the criminal justice system. This (CANRA Task Force) statement demonstrates, contrary to the assertions made by the claimant, that the activities in Levels 3, 4, and 5 are not requirements of CANRA but a more extensive investigation needed for the criminal justice system to apprehend and prosecute a criminal and therefore should not be reimbursable." (Emphasis added.)

The County contends that when law enforcement investigates serious child abuse under CANRA, it does so with the express purpose of completely and accurately preparing and submitting DOJ's SS8583 report. The Alejo Court finds no criminal justice responsibilities here and explains, on page 1,187, that:

"There are sound public policy reasons for the Legislature's imposition of a mandatory reporting duty on police officers. Police officers, unlike ordinary citizens, are specifically trained in the detection, investigation and response to cases of suspected child abuse. Moreover, police officers are in the unique position to discover cases of child abuse because the natural reaction of a relative, friend or neighbor who has observed signs of abuse is to call the police just as Hector did here. The Child Abuse and Neglect Reporting Act contains an elaborate system for reporting and cross-reporting known and suspected cases of child abuse for the purpose of "protect(ing) children from abuse". Section 11164, subd. (a)). ... the whole system depends on professionals such as doctors, nurses, school personnel and peace officers who initially

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<sup>5</sup> These functions are not reimbursable pursuant to Government Code § 17556(g) which provides that "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following ... (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

receive reports of child abuse to investigate, and where warranted, report those accounts to the appropriate agencies. If these professionals, including the police, simply ignore those reports, the Legislature's entire scheme of child abuse prevention is thwarted."

Under CANRA, then, law enforcement officers along with doctors and other professionals are charged with investigating and reporting child abuse. The purpose here is not to determine whether criminal justice offenses have occurred.

Further, as noted in the San Jose Police department public information bulletin, found in Exhibit 7, the police are often first responders in child emergencies and in a unique position to discover cases of child abuse. Calling 911 brings the police to the scene if "the child is in imminent danger of injury, death or sexual abuse" or if the child "... has injuries that need medical attention" or "if the child would not be safe returning or remaining home". These are the times when it is "most appropriate to call the police to make the initial (child abuse) report".

Accordingly, under CANRA, law enforcement's role, even for serious child abuse emergencies, is to protect the child and report abuse if 'substantiated' or 'inconclusive' to DOJ.

Nevertheless, in an abundance of caution to ensure that no criminal justice activities were mixed in with CANRA activities, a detailed re-examination of every RRM activity was undertaken. Finance's standard, that the activities in levels 3 and 4 are reasonably necessary to prepare and submit a DOJ SS8583 report, was used in evaluating if an activity remained in the revised RRM. Further, activities that were not repetitive in nature, but were only required in certain level 3 or 4 cases, were removed from the RRM and placed in the actual cost sections of the Ps&Gs<sup>6</sup>.

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<sup>6</sup> These non-repetitive items included tests and examinations similar to those continuing activities recommended by SCO, on page 3 of their Commission filing. SCO indicated that reimbursable activities include those to:

"... gather and evaluate evidence when reasonably necessary to make evidentiary findings on suspects and victims. Victim costs include medical exams for sexual assault and/or physical abuse, mental health exams, and autopsies. Suspects costs include those incurred for DNA and polygraph testing. Also included when reasonably necessary to make an

## Revised RRM

The re-evaluation of the law enforcement RRM was led by Sergeant Dan Scott and Deputy Suzie Ferrell, of the County Sheriff's department. Their re-evaluation focused on whether a specific activity should remain in the RRM or be removed. Fortunately, a new time survey of specific activities was not necessary as the standard time component for each activity was discernable. If an activity was removed, an appropriate amount of time was also removed. The results are as follows.

The new level 1, where no child abuse is reported after only an initial review of child abuse allegations, is similar to the prior level one. The County's re-evaluation of level 1, based on Finance' standards, required an 8 minute reduction. The new level 1 takes 102 minutes to complete, not the 110 minutes first proposed by the County.

The time to complete the new level 2, where no child abuse is reported after only an initial review of child abuse allegations and a patrol investigation, is 268 minutes, which is identical to the time for the prior level 2.

A new level 3, where child abuse was reported to DOJ as 'inconclusive' or 'substantiated', replaces the previous levels 3 and 4, where child abuse involved non-severe injuries (level 3) or severe injuries (level 4). This resulted in a reduction of 2,258 minutes (838 minutes (new level 3) – 934 minutes (prior level 3) – 2162 minutes (prior level 4)).

It should be noted that the new level 3 does not include certain activities which were found to be non-repetitive. For example, a medical exam for determining Sexual assault, a DOJ reporting category, is not included. Provision for recovering costs for these medical exams and other reasonably necessary activities under an actual cost methodology is found on page 3 of Exhibit 1.

The County's revised law enforcement time-studied activities also include clarifying changes to activity descriptions. Technical jargon was eliminated.

The County's revised law enforcement levels are:

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evidentiary finding, are the costs of video taping interviews of victims and suspects.”

**Level 1: No Child Abuse Based on Preliminary Information (Suspected Child Abuse Report (SCAR) or Call-For-Service)**

All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and closed with no further action taken if no child abuse is indicated based on information received by the agency. The Statewide average time in performing a Level 1 service was found to be 102 minutes. The steps that must be taken by law enforcement personnel in performing this service along with the average time per step are:

Duty	Time in Minutes
Officer receives, prints, or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.	15
Officer processes child abuse report into agency's tracking system	7
Officer reviews report and determines based on the SCAR or call-for-service that no further investigation is required	33
Officer's findings are entered into agency's system	26
Supervising officer reviews investigation findings and approves closure of report indicating no child abuse.	21
<b>TOTALS FOR LEVEL 1</b>	<b>102</b>

**Level 2: Patrol Officer Investigation, No Child Abuse**

All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and if child abuse is not suspected after a patrol officer's investigation, the incident must be documented and closed. The Statewide average time in performing a Level 2 service was found to be 268 minutes. The steps that must be taken by law enforcement personnel in performing this service along with the average time per step are:

Duty	Time in Minutes
Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.	15
Officer processes child abuse report into agency's tracking	7

Duty	Time in Minutes
system	
Officer reviews report and assigns for appropriate follow-up investigation	21
Patrol officer receives call-for-service and acknowledges call	8
Patrol officer conducts preliminary interview with child/children	43
Patrol officer conducts preliminary interviews with parents, siblings, witnesses, and/or suspect(s)	47
Patrol officer enters findings into agency's systems (ends call in computer aided system and documents findings)	76
Supervising officer reviews investigation findings and approves closure of report indicating no child abuse.	51
<b>TOTALS FOR LEVEL 2</b>	<b>268</b>

### **Level 3: Reported CACI Investigation**

All child abuse allegations, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, and investigated. If suspected child abuse has not been ruled out after a patrol officer's investigation, an in depth investigation must be completed to determine if the child abuse is "unfounded," "inconclusive" or 'substantiated'.

If child abuse is "substantiated" or "inconclusive," it must be reported to the State Department of Justice. Before it is reported, certain Level 3 steps, which go beyond those found in Level 1 and 2, must be performed.

The Statewide average time in performing a Level 3 service was found to be 838 minutes. The steps that must be taken by law enforcement personnel in performing this level of service along with the average time per step are:

Duty	Time in Minutes
Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.	15
Officer processes child abuse report into agency's tracking system	7
Officer reviews report and assigns for appropriate follow-up	21

Duty	Time in Minutes
investigation	
Patrol officer receives call-for-service and acknowledges call	8
Patrol officer conducts preliminary interview with child/children	43
Patrol officer conducts preliminary interviews with parents, siblings, witnesses, and/or suspect(s)	47
Patrol officer enters findings into agency's systems (ends call in computer aided system, writes report, enters evidence)	104
Supervising officer reviews investigation findings and approves report indicating child abuse is suspected.	51
Secretary distributes, processes report	31
Child abuse investigator reviews child abuse report	26
Child abuse investigator conducts suspect background check	16
Child abuse investigator confers with social services	34
Child abuse investigator interviews child/children	90
Child abuse investigator interviews witnesses	52
Child abuse investigator interviews suspect(s)	90
Child abuse investigator writes additional reports	99
Supervisor approves reports	31
Secretary process final files and reports	40
Child abuse investigator completes DOJ/CACI form	17
Child abuse investigator completes advisement form to suspect(s)	16
<b>TOTALS FOR LEVEL 3</b>	<b>838</b>

### **Actual Cost Reimbursements for Additional Level 3 Activities**

Actual cost reimbursement is provided for additional services not found in the Level 3 RRM. These services are reasonably necessary in certain cases where it is not clear if a reportable abuse has occurred or if certain person(s) is/are reportable suspect(s).

Claimants may be reimbursed for the actual costs paid for each additional service and the associated labor cost of law enforcement reasonably necessary to provide the service. Claimants may perform time studies in order to compute their labor costs.

The following table itemizes the additional services along with some illustrative costs. In order to be claimed, each service must be associated with a particular Level 3 case.

<b>Additional Level 3 – Child Abuse Investigation Services</b>	<b>Claimant's Actual Service Cost (a)</b>	<b>Claimant's Law Enforcement Labor Cost (b)</b>	<b>Total Cost (a+b)</b>
Medical Exam – Sexual Assault	\$730	\$160	\$890
Medical Exam – Physical Abuse	\$200	\$160	\$360
Polygraph	\$200	\$160	\$360
Collect, Store, and Review Evidence	\$20	\$160	\$180
Obtain Search Warrant	\$10	\$240	\$250
Mental Health Examination	\$200	\$160	\$360
Autopsies	Actual	\$160	
DNA Testing	Actual	\$50	
Video Taping Interviews (Victim or Suspect)	\$20	\$240	\$260

As previously noted in footnote 5 on page 7, the (above) additional level 3 – child abuse services include those that are recommended in SCO's commentary. An additional activity, to "obtain a search warrant", was added to SCO's list. This activity is necessary when it is the only alternative enabling the collection of evidence.

Many other SCO recommendations were incorporated in the County's revised ICAN Ps&Gs.

#### SCO's Recommendations

On April 1, 2010, Ms. Jill Kanemasu, SCO's Chief of the Bureau of Payments, filed "comments and recommendations" on the County's ICAN Ps&Gs. Many of her recommendations are incorporated in the County's most recent Ps&Gs revision which follows this section.

Regarding language introducing the subject of RRM claiming, in Section IV. REIMBURSABLE ACTIVITIES, Ms. Kanemasu recommends the following language:

"To be eligible for mandate cost reimbursement for any fiscal year, only actual costs may be claimed except where reasonable reimbursement methodology rates are adopted as set forth in Section IV B"

This recommendation has been incorporated in the revised Ps&Gs.

Under Section IV B Standard Costs, Ms. Kanemasu recommends the following change.

“IV B. Reasonable Reimbursement Methodology

Reimbursable labor costs may be recovered for performing law enforcement and county welfare agency activities by using reasonable reimbursement methodology set forth below. These times would then be multiplied by the claimant’s average productive hourly rate, computed in accordance with State Controller’s Office claiming instructions to obtain a standard unit cost. The cost is then multiplied by the number of units to determine reimbursable costs.”

This recommendation has been incorporated in the revised Ps&Gs.

Under Section IV C. Reimbursable Activities, Ms. Kanemasu recommends that:

“Claimants must use reasonable reimbursement methodology rates adopted by the Commission.”

Here, Ms. Kanemasu removes the County’s language giving claimants the option of claiming the costs under either an RRM or an actual cost methodology. Upon reflection, this appears reasonable and proper considering that actual costs incurred for this program were incurred as early as July 1, 1999. Providing contemporaneous source documents supporting an actual cost claim for the specific activities detailed in an RRM is problematic if not impossible. Accordingly, SCO’s recommendation here has been incorporated in the revised Ps&Gs.

Regarding training, Ms. Kanemasu maintains that it be done “one time per employee” and that claimants not be reimbursed for the costs of those “ICAN staff” required to attend. She recommends that training be placed under “One-time Activities” as follows:

“C. Develop and train ICAN staff in State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors for their time in

participating in training session and to provide necessary facilities, training materials and audio visual presentations. (One time per employee)

Here, the County disagrees in two respects.

First, in order to provide training once to each employee who may be possibly called upon to comply with ICAN requirements, hereinafter referred to as 'ICAN staff', the training should be providing annually. This is required, if for no other reason, to provide the required training to new employees.

Moreover, the training should be updated at least annually to reflect changes in DOJ's "ICAN requirements". For example, on January 5, 2010 DOJ received a 'notice of approval' from the California Office of Administrative Law<sup>7</sup> to amend "... provisions requiring local agencies to report child abuse and neglect to the Child Abuse and Neglect Central Index (CACI) in order to provide more clear guidance to local agencies regarding the reporting process".

In addition, annual training is required to address recent developments in the investigation of child abuse which is necessary before a DOJ SS5853 report can be filed. For example, trainees need to be aware of the changing concepts of "reasonable suspicion" which prompts them to investigate. Here, the Assembly Committee on Public Safety, in their analysis of AB 2380 for their April 13, 2010 hearing<sup>8</sup>, notes, on page 2, describes the problem:

"The Los Angeles City Attorney's Office has discovered through their work with the Inter-agency Council on Child Abuse and Neglect that many mandated reporters are unclear on (what) constitutes 'reasonable suspicion'. Many have reported that they feel that have to wait until they have concrete evidence before they can notify the authorities. ... This lack of clarity has resulted in many mandated reporters failing to properly report their reasonable suspicions of child abuse or neglect."

Improved approaches to address emerging problems, such as the one facing the Assembly Committee (noted above), is crucial. By limiting the required training to one "time per employee", new approaches in meeting ICAN requirements would

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<sup>7</sup> A copy of this notice is found in Exhibit 8.

<sup>8</sup> A copy of this analysis is found in Exhibit 9.

not be provided. Only the same old approaches would be used by those trained on old requirements.

Also, one-time (per employee) training would result in some employees being trained on old approaches and requirements and some on new ones. Under these circumstances, inconsistent enforcement of DOJ's reporting requirements could result within the same jurisdiction.

Therefore, it is recommended that ICAN training be provided annually to all ICAN staff.

Second, claimants should be reimbursed costs incurred for training participants as well as instructors. The County is unaware of any funding disclaimer which allows the State to avoid reimbursement for any activity that is "reasonably necessary" meeting a mandate requirement. Here, the training mandate requires participation of the trainers as well as the trainees. The trainees are more than "reasonably necessary" for training to occur, they are absolutely necessary.

Accordingly, reimbursement for trainee costs is provided for in the County's revised Ps&Gs.

Therefore, the County places the ICAN Ps&Gs training reimbursement provision under on-going activities, and modifies SCO's language to read:

Develop and annually update ICAN training programs and annually train those employees involved in complying with the State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors and trainees for their time in participating in training session and to provide necessary facilities, training materials and audio visual presentations.

With regard to Ms. Kanemasu's recommendation for reimbursement of the costs of necessary computer and software items on a one-time basis, the County has modified her language. There is a continuing need to update these items to meet changing DOJ requirements. The County's language here is:

To develop and update computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ. Prorate only the costs related to the mandate.

Ms. Kanemasu also recommends reimbursement for the one-time costs incurred to establish due process procedures reasonably necessary to provide "... 14<sup>th</sup> amendment (protections) which need to be afforded to suspects reported to ... DOJ's Child Abuse Central Index (CACI)".

Here, the County agrees with SCO, except that the need to provide due process protections is a continuing one. As noted in the County's January 21, 2010 ICAN Ps&Gs filing with the Commission:

"Due process costs incurred by law enforcement and county welfare agencies to develop and maintain ICAN due process procedures are reasonably necessary to comply with federal due process procedural protections under the 14<sup>th</sup> 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 (of County's January 21, 2010 filing)], 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." (emphasis added.)

Therefore, the County's modification of SCO's language adds the (above) requirement to maintain, as well as to establish, due process protections as follows:

Establish and maintain due process procedures reasonably necessary to comply with due process procedural protections under the 14<sup>th</sup> Amendment which need to be afforded suspects reported to DOJ's Child Abuse Central Index (CACI).

Regarding record retention requirements, The County agrees with SCO and incorporates their recommendation into the County's revised Ps&Gs as follows:

*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).)

Finally, Ms. Kanemasu recommends changes which correct typographical errors in the County's ICAN Ps&Gs or which conform 'boilerplate' Ps&Gs language to current law. The County accepts these changes without exception and has modified its revised Ps&Gs accordingly.

Accordingly, for all of the above reasons, the County revises and presents its ICAN Ps&Gs and RRM's in the pages that follow.

**Los Angeles County's  
Revised Parameters and Guidelines and Proposed Time Standards  
Interagency Child Abuse and Neglect (ICAN) Investigation Reports**

**I. SUMMARY OF THE MANDATE**

On December 19, 2007 the Commission on State Mandates (Commission) adopted 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. 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 reasonable reimbursement methodology rates are adopted 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](http://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. Reasonable Reimbursement Methodology**

Reimbursable labor costs may be recovered for performing law enforcement and county welfare agency activities by using a reasonable reimbursement methodology set fourth below. These times would then by multiplied by the claimant's average 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 Preliminary Information (Suspected Child Abuse Report (SCAR) or Call-for-Service.

All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and closed with no further action taken if no child abuse is indicated based on information received by the agency.

The standard time for Level 1 is 102 minutes.

Level 2 - Patrol Officer Investigation, No Child Abuse

All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and if child abuse is not suspected after a patrol officer's investigation, the incident must be documented and closed.

The standard time for Level 2 is 268 minutes.

### Level 3 - Reported CACI Investigation

All child abuse allegations, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, and investigated. If suspected child abuse has not been ruled out after a patrol officer's investigation, an in depth investigation must be completed to determine if the child abuse is "unfounded," 'inconclusive' or 'substantiated'.

If child abuse is "substantiated" or "inconclusive," it must be reported to the State Department of Justice. Before it is reported, certain Level 3 steps, which go beyond those found in Level 1 and 2, must be performed.

The standard time for Level 3 is 838 minutes.

Actual cost reimbursement is available for additional services not found in the Level 3 RRM. These services are described in IV.C(D) below.

The standard times for county welfare agencies are:

1. Completion of the Child Abuse Summary Report (SS 8583) form

The standard time is 22 minutes.

2. Completion of the Suspected Child Abuse Report (SS 8572) form

The standard time is 23 minutes.

3. Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form.

The standard time is 13 minutes.

4. Filing copies of the SS 8583 and SS 8572 forms with a copy of the investigative report.

The standard time is 22 minutes.

5. Response to DOJ inquires.

The standard time is 9 minutes.

#### IV.C. Reimbursable Activities

The claimant is only allowed to claim and be reimbursed for the increased costs of reimbursable activities. If supervisory costs are claimed, care should be taken to ensure that these costs are not also claimed under claimant's indirect costs. Claimants may only use reasonable reimbursement methodology rates adopted by the Commission.

For each eligible claimant, the following activities are reimbursable:

A. Develop and maintain update Departmental policies and procedures necessary to comply with ICAN's requirements.

B. Participate in meetings with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.

C. Develop and annually update ICAN training programs and annually train those employees involved in complying with the State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors and trainees for their time in participating in training session and to provide necessary facilities, training materials and audio visual presentations.

D. To develop and update computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ. Prorate only the costs related to the mandate.

E. Actual cost reimbursement is available for additional services not found in the Level 3 RRM. These services are necessary in certain Level 3 cases where it is not clear if a reportable abuse has occurred or if certain person(s) is/are reportable suspect(s).

Claimants may be reimbursed for the actual costs paid for each additional service and the associated labor cost of law enforcement reasonably necessary to provide the service. Claimants may perform time studies in order to compute their labor costs.

The following table itemizes the additional services along with some illustrative costs. In order to be claimed, each service must be associated with a particular Level 3 case.

<u>Additional Level 3 – Child Abuse Investigation Services</u>	<u>Claimant's Actual Service Cost (a)</u>	<u>Claimant's Law Enforcement Labor Cost (b)</u>	<u>Total Cost (a+b)</u>
Medical Exam – Sexual Assault	\$730	\$160	\$890
Medical Exam – Physical Abuse	\$200	\$160	\$360
Polygraph	\$200	\$160	\$360
Collect, Store, and Review Evidence	\$20	\$160	\$180
Obtain Search Warrant	\$10	\$240	\$250
Mental Health Examination	\$200	\$160	\$360
Autopsies	Actual	\$160	
DNA Testing	Actual	\$50	
Video Taping Interviews (Victim or Suspect)	\$20	\$240	\$260

F. Establish and maintain due process procedures reasonably necessary to comply with due process procedural protections under the 14<sup>th</sup> Amendment which need to be afforded suspects reported to DOJ's Child Abuse Central Index (CACI).

G. 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, fax or electronic transmission 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 11165.6 except acts or omissions coming within subdivision (b) 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, fax or electronic transmission 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 11165.6 except acts or omissions coming within subdivision (b) 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 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. (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 , fax or electronic transmission 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 reported 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 county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the law enforcement. (Pen Code Sec. 11166.9, subd. (k), now section 11174.34, subd. (l).)
- 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 on 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. 11169, subdivision (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, subdivision (b)(5), now subdivision (b)(7).)

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. (Penal Code Section 11170, subdivision (b)(6)(A), now (b)(10)(A).)

Any city or county law enforcement agency, county probation department, or county welfare shall:

- 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 a 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. Capital Assets and Equipment

Report the purchase price paid for capital 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 Review of State Agency Comments  
Revised Parameters and Guidelines and Proposed Time Standards  
Interagency Child Abuse and Neglect (ICAN) Investigation Reports [00-TC-22]

- Exhibit 1: Revised Law Enforcement Time Standards and Activity Levels
- Exhibit 2: Declaration of Suzie Ferrell, Deputy, Field Operations Support Services, Sheriff's Department, County of Los Angeles
- Exhibit 3: Declaration of Daniel Scott, Sergeant, Special Victims Bureau, Child Abuse Detail, Sheriff's Department, County of Los Angeles
- Exhibit 4: Declaration of Leonard Kaye, Auditor-Controller Department, County of Los Angeles
- Exhibit 5: "Child Abuse Cases by Determination" (in 2007), Department of Justice, Madelyn Childs, Manager, Child Abuse Central Index
- Exhibit 6: "Reporting Child Abuse", San Jose Police Department
- Exhibit 7: Alejo v. City of Alhambra, 75 Cal.App.4<sup>th</sup> 1180.
- Exhibit 8: Notice of Approval of Regulatory Action, Local Agency Reporting - Child Abuse Central Index, California Office of Administrative Law, January 5, 2010.
- Exhibit 9: Assembly Committee on Public Safety, Bill Analysis of AB2380 for the April 13, 2010 Hearing.

**Exhibit 1**  
**Law Enforcement Services**  
**Proposed Reasonable Reimbursement Methodology**  
**Los Angeles County's Revised Parameters and Guidelines**  
**Interagency Child Abuse and Neglect (ICAN) Investigation Reports**

The County's proposed reasonable reimbursement methodology (RRM) to recover (below) specified labor costs is based on Statewide surveys of the time required to provide child abuse services found to be reimbursable by the Commission on State Mandates (Commission) on December 6, 2007. The time to perform a service is simply multiplied by the claimant's average productive hourly rate to obtain a claimant's labor cost reimbursement. Other reimbursable costs, such as the costs of required medical examinations, are provided for under the actual cost method.

The RRM only includes activities which are reasonably necessary in providing reimbursable child abuse services. Other activities, such as the time necessary to meet additional criminal prosecution duties, are not included. Those activities that are included in the RRM are grouped under three possible Department of Justice (DOJ) investigation scenarios or levels:

**Level 1: No Child Abuse Based on Preliminary Information (Suspected Child Abuse Report (SCAR) or Call-For-Service)**

All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and closed with no further action taken if no child abuse is indicated based on information received by the agency. The Statewide average time in performing a Level 1 service was found to be 102 minutes. The steps that must be taken by law enforcement personnel in performing this service along with the average time per step are:

<b>Duty</b>	<b>Time in Minutes</b>
Officer receives, prints, or transcribes child abuse reports (SCARs or calls for-service) from the public, cross-reporting agency department, and mandated reporters.	15
Officer processes child abuse report into agency's tracking system	7
Officer reviews report and determines based on the SCAR or call-for-service that no further investigation is required	33
Officer's findings are entered into agency's system	26
Supervising officer reviews investigation findings and approves closure of report indicating no child abuse.	21
<b>TOTALS FOR LEVEL 1</b>	<b>102</b>

**Level 2: Patrol Officer Investigation, No Child Abuse**

All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed; investigated and if child abuse is not suspected after a patrol officer's investigation, the incident must be documented and closed. The Statewide average time in performing a Level 2 service was found to be 268 minutes. The steps that must be taken by law enforcement personnel in performing this service along with the average time per step are:

<b>Duty</b>	<b>Time in Minutes</b>
Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.	15
Officer processes child abuse report into agency's tracking system	7
Officer reviews report and assigns for appropriate follow-up investigation	21
Patrol officer receives call-for-service and acknowledges call	8
Patrol officer conducts preliminary interview with child/children	43
Patrol officer conducts preliminary interviews with parents, siblings, witnesses, and/or suspect(s)	47
Patrol officer enters findings into agency's systems (ends call in computer aided system and documents findings)	76
Supervising officer reviews investigation findings and approves closure of report indicating no child abuse.	51
<b>TOTALS FOR LEVEL 2</b>	268

**Level 3: Reported CACI Investigation**

All child abuse allegations, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, and investigated. If suspected child abuse has not been ruled out after a patrol officer's investigation, an in depth investigation must be complete to determine if the child abuse is "unfounded," 'inconclusive' or 'substantiated'.

If child abuse is "substantiated" or "inconclusive," it must be reported to the State Department of Justice. Before it is reported, certain Level 3 steps, which go beyond those found in Level 1 and 2, must be performed.

The Statewide average time in performing a Level 3 service was found to be 838 minutes. The steps that must be taken by law enforcement personnel in performing this level of service along with the average time per step are:

Duty	Time in Minutes
Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.	15
Officer processes child abuse report into agency's tracking system	7
Officer reviews report and assigns for appropriate follow-up investigation	21
Patrol officer receives call-for-service and acknowledges call	8
Patrol officer conducts preliminary interview with child/children	43
Patrol officer conducts preliminary interviews with parents, siblings, witnesses, and/or suspect(s)	47
Patrol officer enters findings into agency's systems (ends call in computer aided system, writes report, enters evidence)	104
Supervising officer reviews investigation findings and approves report indicating child abuse is suspected.	51
Secretary distributes, processes report	31
Child abuse investigator reviews child abuse report	26
Child abuse investigator conducts suspect background check	16
Child abuse investigator confers with social services	34
Child abuse investigator interviews child/children	90
Child abuse investigator interviews witnesses	52
Child abuse investigator interviews suspect(s)	90
Child abuse investigator writes additional reports	99
Supervisor approves reports	31
Secretary process final files and reports	40
Child abuse investigator completes DOJ/CACI form	17
Child abuse investigator completes advisement form to suspect(s)	16
<b>TOTALS FOR LEVEL 3</b>	<b>838</b>

**Actual cost Reimbursements for Additional Level 3 Activities**

Actual cost reimbursement is provided for additional services not found in the Level 3 RRM. These services are reasonably necessary in certain cases where it is not clear if a reportable abuse has occurred or if certain person(s) is/are reportable suspect(s).

Claimants may be reimbursed for the actual costs paid for each additional service. The associated labor cost of law enforcement reasonably necessary to provide the service is also reimbursable. Claimants may perform time studies in order to compute their labor costs.

The following table itemizes the additional services along with some illustrative costs. In order to be claimed, each service must be associated with a particular Level 3 case.

<b>Additional Level 3 – Child Abuse Investigation Services</b>	<b>Claimant's Actual Service Cost (a)</b>	<b>Claimant's Law Enforcement Labor Cost (b)</b>	<b>Total Cost (a+b)</b>
Medical Exam – Sexual Assault	\$730	\$160	\$890
Medical Exam – Physical Abuse	\$200	\$160	\$360
Polygraph	\$200	\$160	\$360
Collect, Store, and Review Evidence	\$20	\$160	\$180
Obtain Search Warrant	\$10	\$240	\$250
Mental Health Examination	\$200	\$160	\$360
Autopsies	Actual	\$160	
DNA Testing	Actual	\$50	
Video Taping Interviews (Victim or Suspect)	\$20	\$240	\$260

**Law Enforcement Services  
Proposed Reasonable Reimbursement Methodology (RRM)  
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 County's initial law enforcement ICAN RRM levels in light of State agency comments and discussions with Sergeant Daniel Scott with the Los Angeles County Sheriff's Department, Special Victims Bureau, Child Abuse Detail.

I declare that I subsequently developed an RRM with three levels or groups of activities to replace the County's initial RRM with four levels.

I declare that the three levels of the replacement RRM are:

**Level 1: No Child Abuse Based on Preliminary Information (Suspected Child Abuse Report (SCAR) or Call-For-Service)**

All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and closed with no further action taken if no child abuse is indicated based on information received by the agency.

I declare that the Statewide average time in performing a Level 1 service was found to be 102 minutes.

**Level 2: Patrol Officer Investigation, No Child Abuse**

All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and if child abuse is not suspected after a patrol officer's investigation, the incident must be documented and closed.

I declare that the Statewide average time in performing a Level 2 service was found to be 268 minutes.

**Level 3: Reported CACI Investigation**

All child abuse allegations, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, and investigated. If suspected child abuse has not been ruled out after a patrol officer's investigation, an in depth investigation must be completed to determine if the child abuse is "unfounded," 'inconclusive' or 'substantiated'.

If child abuse is "substantiated" or "inconclusive," it must be reported to the State Department of Justice. Before it is reported, certain Level 3 steps, which go beyond those found in Level 1 and 2, must be performed.

I declare that the Statewide average time in performing a Level 3 service was found to be 838 minutes.

**Actual Cost Reimbursements for Additional Level 3 Activities**

Actual cost reimbursement is provided for additional services not found in the Level 3 RRM. These services, such as medical examinations, are reasonably necessary in certain cases where it is not clear if a reportable abuse has occurred or if certain person(s) is/are reportable suspect(s).

I declare that it is my information or belief that the replacement RRM, found in Exhibit 1 of this filing, contains only those activities that are reasonably necessary in order to complete the state "Child Abuse Investigation Report" Form SS 8583.

I declare that it is my information or belief that those activities necessary to meet additional criminal prosecution duties are not included in the replacement RRM.

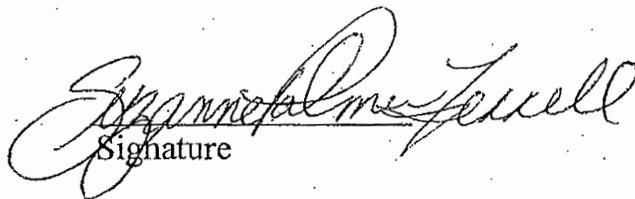
I declare that I met and conferred with law enforcement officials throughout the State as well as staff representing State associations in developing a survey instrument to derive standard times in performing ICAN steps now regrouped in the replacement RRM.

I declare that it is my information and belief that the average or standard time for individual ICAN steps, within the three levels of the replacement in Exhibit 1, was obtained from times reported by a representative sample of law enforcement agencies during the initial RRM survey.

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.

4/27/10 Commerce, CA  
Date and Place

  
Signature

**Law Enforcement Services**  
**Proposed Reasonable Reimbursement Methodology (RRM)**  
**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 Special Victims Bureau as a detective and sergeant specializing in child abuse investigations.

I declare that I have reviewed the comments filed by the State Department of Finance (Finance) on March 30, 2010 regarding the subject RRM, indicating that "... Finance concurs with DSS (the State Department of Social Services) and believes that some of the activities in Levels 1 and 2 are sufficient to comply with the mandated reporting requirement" but that "... Finance believes that the activities in levels 3, 4 and 5 of the RRM extend beyond the limited investigation approved in the Statement of Decision (SOD) for the purpose of preparing and submitting Form SS 8583 to the Department of Justice (DOJ)".

I declare that the SOD, cited by Finance, indicates, on pages 40-41, that an 'active', not a 'limited', investigation "... is necessary in order to complete the state "Child Abuse Investigation Report" Form SS 8583" and that "... before completing a child abuse investigative report form and forwarding it to the state ... an investigation sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive", as defined by Penal Code section 11165.12, is newly mandated".

I declare that the California Department of Justice (DOJ), in their 2005 "Guide to Reporting Child Abuse to the California Department of Justice, on page 15, 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 I have reviewed the County’s initial law enforcement ICAN RRM levels and, in light of the above minimum investigation standards for purposes of complying with DOJ’s reporting requirements, propose their replacement with three different levels which are detailed in Exhibit 1, attached to this filing.

I declare that it is my information or belief that the replacement RRM includes only activities that are reasonably necessary in providing reimbursable child abuse services.

I declare that it is my information or belief that those activities necessary to meet additional criminal prosecution duties are not included in the replacement RRM.

I declare that it is my information and belief that the omission of one or more ICAN activities described in Exhibit 1 could impair the requirement to conduct an “active investigation” as defined in the California Department of Justice (DOJ) Form SS 8583.

I declare that it is my information and belief that the omission of one or more ICAN activities described in Exhibit 1 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 1 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.

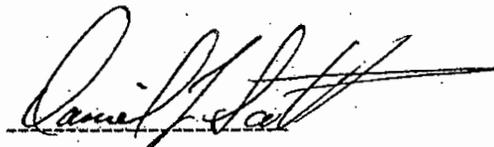
Accordingly, it is my information and belief that the activities described in Exhibit 1 are reasonably necessary in performing ICAN duties.

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.

4-23-10 @ Whittier, CA

Date and Place



Signature



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

Exhibit 4

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-3873  
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE  
AUDITOR-CONTROLLER

MARIA M. OMS  
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS  
JOHN NAIMO  
JUDI E. THOMAS

**Los Angeles County's Review of State Agency Comments  
Revised Parameters and Guidelines and Proposed Time Standards  
Interagency Child Abuse and Neglect (ICAN) 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] and proposed time standards 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 21, 2010 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.

5/11/10, Los Angeles, CA

Date and Place

Signature



**EDMUND G. BROWN JR.**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**

**FAX TRANSMISSION COVER SHEET**

**IMPORTANT/CONFIDENTIAL:** This communication is intended only for the use of the individual or entity to which it is addressed. This message contains information from the State of California, Attorney General's Office, which may be privileged, confidential, and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

**DATE:** 5/4/2010 **TIME:** 11:29:17 AM **NO. OF PAGES:** 2  
(including cover sheet)

**TO:**  
**NAME:** Leonard Kaye  
**OFFICE:** LA County Auditor  
**LOCATION:** \_\_\_\_\_  
**FAX NO:** 213-617-8106 **PHONE NO:** \_\_\_\_\_

**FROM:**  
**NAME:** Madelyn Childs  
**OFFICE:** BCIA/Child Abuse Central Index (CACI)  
**LOCATION:** 4949 Broadway  
**FAX NO:** 916-227-4094 **PHONE NO:** 916-227-3263

**MESSAGE/INSTRUCTIONS**

*CACI stat request*

**PLEASE DELIVER AS SOON AS POSSIBLE!**  
**FOR ASSISTANCE WITH THIS FAX, PLEASE CALL THE SENDER**

CALIFORNIA DEPARTMENT OF JUSTICE  
CHILD ABUSE RESPONSE PROCESSOR  
ABUSE BY DETERMINATION

Generated: 04/30/2010 2.24 PM

Criteria: For dates from 01/01/2007 until 12/31/2007

Determination	Abuse Type	Count	Percentage
Abuse Suspected	Mental	1	100.00 %
	<b>Total</b>	<b>1</b>	<b>0.00 %</b>
Inconclusive	Mental	2241	25.13 %
	Physical	4516	50.64 %
	Severe Neglect	134	1.50 %
	Sexual Assault/Exp	2026	22.72 %
	<b>Total</b>	<b>8917</b>	<b>37.18 %</b>
Investig Initiated	Sexual Assault/Exp	1	100.00 %
	<b>Total</b>	<b>1</b>	<b>0.00 %</b>
Substantiated	Mental	3258	21.53 %
	Physical	6405	42.52 %
	Severe Neglect	1020	6.77 %
	Sexual Assault/Exp	4379	29.07 %
	<b>Total</b>	<b>15062</b>	<b>62.81 %</b>
Unsubstantiated	Sexual Assault/Exp	1	100.00 %
	<b>Total</b>	<b>1</b>	<b>0.00 %</b>
<b>Grand Total</b>		<b>23982</b>	



<a href="#">SJPD Home</a>	<a href="#">Reporting Crime</a>	<a href="#">Recruiting Join SJPD</a>	<a href="#">Crime Stats. &amp; Maps</a>	<a href="#">Reports &amp; Records</a>	<a href="#">Community Outreach</a>	<a href="#">Volunteer Opportunities</a>
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SJPD » [ReportingCrime](#) » Reporting Child Abuse

**Reporting Crime**

- [How To Report A Crime](#)
- [Report Crimes Online](#)
- [Auto Theft](#)
- [Bicycle Theft](#)
- [Child Abuse](#)
- [Domestic Violence](#)
- [Elder Abuse](#)
- [Forgery - Fraud - Identity Theft](#)
- [Graffiti](#)
- [Homeless or Vagrancy Issues](#)
- [Loitering and Trespassing](#)
- [Missing Persons](#)
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- [Non-Moving Vehicle Violations](#)
- [Phone Harassment](#)
- [Recycling Theft](#)
- [Victim Assistance](#)

**Reporting Child Abuse**

Definitions of Child Abuse

California state statutes describe physical and sexual abuse, neglect and endangerment. In general, they can be described this way:

**Physical abuse** is any act(s) which results in non-accidental injuries to a child including patterns of unexplained injuries and injuries that appear to have been caused in a manner inconsistent with the explanation. Physical abuse includes unreasonably restraining a child with tying, caging or chaining and excessive or unreasonably forceful discipline that leave injuries or marks on a child. Physical abuse is also defined as assaultive behavior not usually associated with discipline such as shaking, kicking, cutting and burning.

**Neglect** is the failure of a parent to provide for the child's physical, emotional, medical and educational well being. California law states that a parent or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health is guilty of neglect of a child. A parent who knowingly fails to protect a child from continuing physical or sexual abuse is also guilty of neglect.

**Endangerment** is when a parent or caretaker intentionally or recklessly causes or permits a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death including allowing a child to be present where illegal drugs are being made, kept, sold or used and recklessly allowing a juvenile access to a loaded firearm.

How do I report suspected child abuse?

The San Jose Police Department and Santa Clara County Department of Family and Children's Services are the two agencies charged with receiving reports of child abuse occurring in San Jose. These agencies are also responsible for the joint investigation of child abuse allegations. You may report suspicions of child abuse to the San Jose Police Department 24 hours a day by calling 911. The operator will ask you to describe the circumstances and then dispatch a patrol officer to take a report. You may also call at the Santa Clara County Department of Family and Children's Services at (408) 299-2071. A child welfare social worker is available 24 hours a day to take reports.

When reporting suspicions of child abuse, be prepared to provide as much information as you have including the names and addresses of the child and parents and specific data about what happened, who was involved, and when and where the events took place. Other helpful information is what school the child attends, who else might have information about the child's situation, where the child is now and the names of siblings or other members of the household.

Any report made to the San Jose Police Department will automatically be reported to the Santa Clara County Department of Family and Children's Services, as any report made to the Santa Clara County Department of Family and Children's Services will be sent to the San Jose Police Department. This is included in the Child Abuse Protocol for Santa Clara County Law Enforcement outlining requirements for child abuse investigations. However, there are often times when it is most appropriate to call the police to make the initial report.

- If you believe a child is in imminent danger of injury, death or sexual abuse, call 911 and describe the situation to the operator with as much detail as you can. The police have the ability to remove a child from a dangerous situation while a child protection investigation is completed.
- If you believe that a child has injuries that need medical attention, call 911 and provide as much information as possible. The operator may dispatch paramedics and the police to insure that the child receives needed medical care.
- If you believe that the child would not be safe returning or remaining at home, call 911. The police can make arrangements for the temporary care of a child when his home is unsafe.

Who must report child abuse?

California law requires that any person whose job involves working professionally with children and who knows or has reason to believe that a child is being neglected or physically or sexually abused **shall** immediately report the suspected incident to the local police and/or child protection. Mandated reporters include:

1. Childcare custodians (school, daycare, etc.);
2. Health practitioners (medical and non-medical);
3. Employees of child protective agencies (police department and Department of Family and Children's Services (DFCS));
4. Commercial film and photographic print processors;
5. Child visitation monitors;
6. Peace Officers;
7. Probation and parole officers;
8. Custodial officers and defined by PC 831.5;
9. Firefighters, animal control officers, humane society officers;
10. Clergy (excluding confession or its equivalent).

The report must be made as soon as practical.

Definitions of Child Abuse

- How do I report suspected child abuse?
- Who must report suspicions of child abuse?
- Are there penalties for a mandated reporter who fails to report child abuse?
- If the allegation of child abuse cannot be proven, will I get into trouble for making the report?
- What should I do if a child tells me about abuse?
- How do I recognize child abuse?
- Why should I report child abuse?
- I'm not sure if this situation is serious enough to report
- As a parent, what can I do to prevent child abuse?
- Where can I learn more about child abuse?

**Related Information**

- [Bureau of Investigations](#)
- [Crime Prevention Unit](#)
- [Metro Unit](#)

**Other Links**

- [SCC Adult Protective Services](#)
- [CA Dept. of Social Services](#)
- [CA Welfare & Institutions Code](#)

Are there penalties for a mandated reporter who fails to report child abuse? 

Yes. Failure of a mandated reporter to report suspected abuse is a misdemeanor. Intentionally concealing one's failure to report is a continuing offense until the failure to report is discovered.

If the allegation of child abuse cannot be proven, will I get into trouble for making the report? 

No, you will not. Anyone reporting in good faith (with a reasonable belief) may not be criminally prosecuted or sued in civil court for libel, slander, defamation, invasion of privacy, or breach of confidentiality. A person who knowingly or recklessly makes a false report is not protected from prosecution or civil suit.

What should I do if a child tells me about abuse? 

- Be calm. If you appear to be angry, upset or very emotional, the child will be frightened.
- Let the child tell you about what happened in his own words and then reassure him that you believe him.
- Tell the child that he is not in trouble and that he did the right thing to tell you about what happened.
- Tell the child that you want to make sure that he will be safe. Let him know that you are going to get help so that this doesn't happen again.
- Report what the child told you to the police or child protection.

How do I recognize child abuse? 

Signs of physical abuse include unexplained or unreasonable bruises, burns, cuts, abrasions and broken bones. Patterned marks made by objects like belts, cords, teeth, handprints, and clothes or curling irons can be strongly indicative of physical abuse especially when combined with a child's description of how the injury was inflicted. Another strong indicator of child abuse is an explanation for injuries that would be unusual in a given age group. For example, a broken arm or leg in a four-month old child is blamed on a fall down the stairs.

Neglect can be indicated by a child who is chronically dirty or dressed inappropriately for the weather, a child who is frequently hungry or sleepy and reports being unable to eat or sleep regularly at home, a child who does not attend school regularly or one who has not been enrolled in school, a child who remains untreated or is treated inappropriately for a medical problem or a child who describes being left alone and unable to care for himself.

A good indicator of endangerment is a description by a child of events that may place him in danger such as being involved in a physical, domestic fight between adults in the home, seeing illegal drugs being used or sold or having access to loaded guns kept in the home.

Why should I report child abuse? 

The most important reason to report child abuse is to protect the child from further abuse. Children have few resources for changing the circumstances of their lives and children who are being hurt by their caretakers rely on the intervention of others to protect them. Reporting abuse is also a way to ensure that parents who need help but are not able to ask for it are offered parenting resources.

I'm not sure if the situation is serious enough to report. 

Describe the situation to child protection or the police. Remember that often the most serious abuse occurs in private and away from anyone but the children involved. What you have seen or heard may be only the tip of the iceberg.

As a parent, what can I do to prevent child abuse? 

- Practice disciplining your children in a calm, thoughtful way. Give yourself time to cool off rather than punishing in anger. Show your children ways that conflicts can be resolved with words rather than hitting or hurting.
- Talk with your children everyday and listen carefully to what they say about their lives. Be alert to changes in their behavior or emotions and talk calmly with them if you are concerned.
- Teach your children that their bodies are their own and that they can say no to touches that feel bad or confusing. Talk with them about privacy to help them learn good boundaries and reassure them that it is ok to say no to things that violate their privacy – even if they are saying no to an adult.
- Teach your children to tell you if they are approached, talked to or touched in a way that hurts, scares or confuses them. Reassure them that you will not be angry with them, but want to help them stay safe.
- Help your children think about what they would do if something confusing or scary happened to them. Talk about different scenarios or play the "what if" game. This will help them identify ways to help themselves be safe and to think about the adults they can turn to for help in different places such as school, the park, the library, and church.

Where can I learn more about child abuse? 

If you would like more information about recognizing and reporting child abuse, please call the San Jose Police Department, Family Violence Unit at (408) 277-3700 between the hours of 8:00 am and 5:00 p.m. The receptionist will connect you with a child abuse investigator.

For more information on the web, here are links to several sites with resources for parents, teachers and anyone interested in preventing child abuse.

- [www.safestate.org](http://www.safestate.org)
- Local Child Abuse Council 1-800-4-A-CHILD
- Center for Child Protection 1-408-885-6460



75 Cal.App.4th 1180, 89 Cal.Rptr.2d 768, 99 Cal. Daily Op. Serv. 8676, 1999 Daily Journal D.A.R. 11,011  
(Cite as: 75 Cal.App.4th 1180, 89 Cal.Rptr.2d 768)

▷  
Court of Appeal, Second District, Division 7, California.  
Alec ALEJO, a Minor, etc., Plaintiff and Appellant,  
v.  
CITY OF ALHAMBRA, Defendant and Respondent.  
No. B130088.

Oct. 27, 1999.  
Review Denied Feb. 23, 2000.

Child sued city and police officer for negligence in failing to investigate father's reports that child was being physically abused by mother's live-in boyfriend. The Superior Court, Los Angeles County, No. GC 021238, Thomas William Stoeber, J., sustained city's demurrer without leave to amend and dismissed city from action. Child appealed. The Court of Appeal, Johnson, J., held that: (1) police officer has mandatory statutory duty to investigate accounts of child abuse and to report suspected abuse if objectively reasonable person would suspect abuse; (2) allegations in complaint supported claim of negligence per se; (3) whether officer's negligence in not investigating father's reports were proximate cause of child's severe injuries six weeks later was question of fact that could not be resolved at pleading stage; and (4) complaint did not give rise to claim of sovereign immunity.

Reversed and remanded.

West Headnotes

**[1] Appeal and Error 30 ↪917(1)**

**30 Appeal and Error**

**30XVI Review**

**30XVI(G) Presumptions**

**30k915 Pleading**

**30k917 Demurrers**

**30k917(1) k. In General. Most Cited**

**Cases**

On appeal of judgment sustaining a demurrer without leave to amend, Court of Appeal accepts as true the properly pleaded factual allegations of the complaint.

**[2] Negligence 272 ↪282**

**272 Negligence**

**272VI Vulnerable and Endangered Persons; Rescues**

**272k282 k. Duty in General. Most Cited**

**Cases**

As a general rule, one has no duty to come to the aid of another.

**[3] Municipal Corporations 268 ↪740(1)**

**268 Municipal Corporations**

**268XII Torts**

**268XII(A) Exercise of Governmental and Corporate Powers in General**

**268k740 Injuries by Mobs or Other Wrongdoers**

**268k740(1) k. In General. Most Cited**

**Cases**

There is generally no duty owed by police to individual members of the general public because a law enforcement officer's duty to protect the citizenry is a duty owed to the public as a whole; therefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection.

**[4] Appeal and Error 30 ↪863**

**30 Appeal and Error**

**30XVI Review**

**30XVI(A) Scope, Standards, and Extent, in General**

**30k862 Extent of Review Dependent on Nature of Decision Appealed from**

**30k863 k. In General. Most Cited Cases**

When a demurrer is sustained without leave to amend, the question on appeal is whether the complaint states a cause of action under any legal theory; therefore, it is immaterial whether plaintiff relied in complaint on a correct theory.

**[5] Municipal Corporations 268 ↪747(3)**

**268 Municipal Corporations**

75 Cal.App.4th 1180, 89 Cal.Rptr.2d 768, 99 Cal. Daily Op. Serv. 8676, 1999 Daily Journal D.A.R. 11,011  
(Cite as: 75 Cal.App.4th 1180, 89 Cal.Rptr.2d 768)

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(3) k. Police and Fire. Most

Cited Cases

Statute governing responsibilities of employees of child protective agencies with respect to reporting child abuse imposes two mandatory duties on a police officer who receives an account of child abuse: a duty to investigate and a duty to report suspected abuse when an objectively reasonable person in the same situation would suspect abuse. West's Ann.Cal.Penal Code § 11166(a).

**[6] Municipal Corporations 268 747(3)**

268 Municipal Corporations

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(3) k. Police and Fire. Most

Cited Cases

A physician's duty under former statute to report child abuse when it "appears" to her a child has been subjected to abuse and a police officer's statutory duty to report when she "reasonably suspects" a child has been subjected to abuse are not rationally distinguishable for purposes of imposing liability on city under the negligence per se doctrine. West's Ann.Cal.Penal Code § 11166(a); West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Evid.Code § 669; West's Ann.Cal.Penal Code § 11161.5 (Repealed).

**[7] Municipal Corporations 268 747(3)**

268 Municipal Corporations

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(3) k. Police and Fire. Most

Cited Cases

Imposition of mandatory duty on police officer to investigate allegations of child abuse does not depend on a finding, as a matter of law, that breach of that

duty was the cause of child's injuries. West's Ann.Cal.Penal Code § 11166(a).

**[8] Municipal Corporations 268 747(3)**

268 Municipal Corporations

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(3) k. Police and Fire. Most

Cited Cases

Claim against city of negligence per se was supported by allegations that father reported to police officer that he had recently seen three-year-old child with black eye and that neighbor had told him of another beating of child by mother's live-in boyfriend, that officer failed to investigate possible abuse or prepare any reports in connection with it, and that six weeks later child received severe beating by mother's boyfriend that left him totally and permanently disabled. West's Ann.Cal.Penal Code § 11166(a); West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Evid.Code § 669.

**[9] Municipal Corporations 268 742(6)**

268 Municipal Corporations

268XII Torts

268XII(A) Exercise of Governmental and Corporate Powers in General

268k742 Actions

268k742(6) k. Trial, Judgment, and Review. Most Cited Cases

Whether police officer's negligence in not investigating father's reports of suspected physical abuse of three-year-child by mother's live-in boyfriend was proximate cause of child's disabling injuries six weeks later from severe beating was question of fact that could not be resolved at pleading stage of child's negligence per se claim against city, but should be determined at trial through expert testimony. West's Ann.Cal.Penal Code § 11166(a); West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Evid.Code § 669.

**[10] Negligence 272 1713**

272 Negligence

75 Cal.App.4th 1180, 89 Cal.Rptr.2d 768, 99 Cal. Daily Op. Serv. 8676, 1999 Daily Journal D.A.R. 11,011  
(Cite as: 75 Cal.App.4th 1180, 89 Cal.Rptr.2d 768)

272XVIII Actions

272XVIII(D) Questions for Jury and Directed Verdicts

272k1712 Proximate Cause

272k1713 k. In General. Most Cited

Cases

Although normally the issue of causation is a question of fact and therefore not within the scope of a demurrer to a negligence complaint, the court may properly examine the proximate cause of the alleged injury at the demurrer stage.

**[11] Municipal Corporations 268 ↪747(3)**

268 Municipal Corporations

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(3) k. Police and Fire. Most

Cited Cases

Police officer and city would not be relieved of liability for injuries sustained by child from mother's live-in boyfriend, on theory that boyfriend's criminal acts were an intervening cause that broke chain of causation between officer's failure to investigate child abuse report and severe beating that child received six weeks later, if boyfriend's future criminal conduct was foreseeable result of child's remaining in his custody. West's Ann.Cal.Penal Code § 11166(a); West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Evid.Code § 669.

**[12] Municipal Corporations 268 ↪747(3)**

268 Municipal Corporations

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(3) k. Police and Fire. Most

Cited Cases

Investigation by police officers of reported child abuse is not a discretionary act so as to immunize officer or city from liability for negligent investigation; as employees of a child protective agency, police officers have mandatory statutory duty to investigate such reports. West's Ann.Cal.Penal Code § 11166(a); West's Ann.Cal.Gov.Code §§ 815.2(b),

818.2, 820.2, 821.

**[13] Municipal Corporations 268 ↪747(3)**

268 Municipal Corporations

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(3) k. Police and Fire. Most

Cited Cases

Statutes declaring immunity from damages caused by failure to enforce laws did not immunize police officer or city from liability for officer's failure to investigate report of child abuse, as officer's duty to investigate was mandatory rather than discretionary. West's Ann.Cal.Penal Code § 11166(a); West's Ann.Cal.Gov.Code §§ 818.2, 821.

**[14] Municipal Corporations 268 ↪747(3)**

268 Municipal Corporations

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(3) k. Police and Fire. Most

Cited Cases

Statutes that confer immunity for damages caused by law enforcement failures encompass only discretionary law enforcement activity; they do not bar liability for breach of a mandatory law enforcement duty. West's Ann.Cal.Gov.Code §§ 818.2, 821.

**\*\*769 \*1182** Ajalat and Ajalat, Gregory M. Ajalat and Stephen P. Ajalat, Burbank, for Plaintiff and Appellant.

**\*1183** Leland C. Dolley, City Attorney (Alhambra), Brian A. Pierik, Camarillo, and Elizabeth R. Feffer, Los Angeles, for Defendant and Respondent.

JOHNSON, J.

In 1973, Dr. Vincent Fontana wrote a book on child abuse entitled, "Somewhere a Child Is Crying." The complaint in this case asks: "Is anyone listening?" In sustaining **\*\*770** a demurrer to the complaint, the trial court held a city is not liable when its police officers

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fail to investigate and report their reasonable suspicions a child has been the victim of physical abuse and, as a result, the child suffers further abuse. We reverse.

#### FACTS AND PROCEEDINGS BELOW

[1] For the purposes of this appeal, we accept as true the properly pleaded factual allegations of the complaint. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 635, 49 Cal.Rptr.2d 377, 909 P.2d 981.)

Three-year old Alec Alejo resided with his mother and her live-in boyfriend, Mike Gonzalez, in the City of Alhambra. On May 18, 1997, Hector Alejo, Alec's father, became concerned when he observed Alec had severe facial bruising to and surrounding the area of his left eye. He questioned both Alec and his mother, Jamie Clark, about the injury but their explanations did not dispel his concern.

Three days later, on the evening of May 21, 1997, Hector received a telephone call from a neighbor and close friend of Clark's, who advised Hector that Clark and Gonzalez were using drugs and Gonzalez was physically beating and abusing Alec. The caller also inquired whether Hector had seen Alec's recent "black eye".

Immediately after receiving the telephone call, Hector went to the Alhambra police department and reported to "Officer Doe" <sup>FN1</sup> his knowledge about the physical and mental abuse being inflicted upon Alec by Gonzalez. He informed the officer of Alec's black eye and the fact he had just received a telephone call alerting him Clark and Gonzalez were using drugs and Gonzalez was in the process of physically abusing Alec. Hector, concerned for his child's safety, described the location where Alec and his mother lived, offered to take the police there and requested the police immediately go and investigate the matter.

<sup>FN1</sup> The complaint alleges plaintiff is presently unaware of the true name of this officer.

Despite receiving this report of abuse from Alec's father, the Alhambra police department and Officer Doe, without reasonable care, diligence, \*1184 justification or regard for Alec's safety, failed to conduct

any investigation into whether Alec was being abused and failed to prepare an internal report or cross-report to other governmental agencies and offices concerning Alec's possible abuse.

Six weeks after Hector reported Alec's abuse to the Alhambra police, Alec was subjected to a severe, violent and unlawful beating by Gonzalez. This beating caused Alec serious physical injuries as well as great mental, emotional and physical suffering. As a result of this abuse, Alec has suffered total and permanent disability.

Alec brought this action against the City of Alhambra, its employee Officer Doe, and Mike Gonzalez. The complaint alleges negligence on the part of the city and Officer Doe in failing to investigate or report a reasonable suspicion of child abuse as mandated by Penal Code section 11164, et. seq. <sup>FN2</sup>

<sup>FN2</sup> All future statutory references are to the Penal Code unless otherwise specified.

The city demurred on the grounds its police department and officers had no special duty to protect Alec from child abuse, the reporting and investigation of child abuse by law enforcement is a discretionary function, its police department and officers are immune from liability for their failure to act and, in any event, their failure to act was not the cause of Alec's injuries. The trial court sustained the city's demurrer without leave to amend and entered judgment dismissing the city from the action. Alec filed a timely appeal.

#### DISCUSSION

##### I. THE COMPLAINT STATES A CAUSE OF ACTION FOR NEGLIGENCE UNDER THE THEORY OF NEGLIGENCE PER SE.

For the reasons explained below, we hold Alec's complaint states a cause of \*\*771 action under the doctrine of negligence per se based on the Child Abuse and Neglect Reporting Act (Art. 2.5, §§ 11164-11174.3).

To state a cause of action under the negligence per se doctrine, the plaintiff must plead four elements: (1) the defendant violated a statute or regulation, (2) the

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violation caused the plaintiff's injury, (3) the injury resulted from the kind of occurrence the statute or regulation was designed to prevent, and (4) the plaintiff was a member of the class of persons the \*1185 statute or regulation was intended to protect. (Evid.Code, § 669.)<sup>FN3</sup> Only the first two elements of the negligence per se doctrine are at issue in this appeal. It is beyond dispute the mental and physical abuse 3-year-old Alec allegedly suffered at the hands of Gonzalez was exactly the type of injury the California Legislature intended to prevent in enacting the Child Abuse and Neglect Reporting Act. (§ 11164, subd. (b).)<sup>FN4</sup>

<sup>FN3</sup> Government Code section 815.6 applies the negligence per se doctrine to public entities. It provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." Courts have recognized that as a practical matter the standard for determining whether a mandatory duty exists is "virtually identical" to the test for an implied statutory duty of care under Evidence Code section 669. (*Tirpak v. Los Angeles Unified School Dist.* (1986) 187 Cal.App.3d 639, 646, 232 Cal.Rptr. 61, cited with approval in *Hoffv. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 939, fn. 7, 80 Cal.Rptr.2d 811, 968 P.2d 522.)

<sup>FN4</sup> Section 11164, subdivision (b) states: "The intent and purpose of this [act] is to protect children from abuse." Furthermore, authorities point out the most serious injuries and greatest numbers of deaths from child abuse occur to children 3 years of age and under. (Comment, Reporting Child Abuse: When Moral Obligations Fail (1983) 15 Pacific L.J. 189, 190, fn. 12.)

A. Officer Doe Had A Duty Under Section 11166 To Investigate And Report A Reasonable Suspicion Of Child Abuse.

[2][3] We acknowledge, as a general rule one has no

duty to come to the aid of another. (*Williams v. State of California* (1983) 34 Cal.3d 18, 23, 192 Cal.Rptr. 233, 664 P.2d 137) Accordingly, there is no duty owed by police to individual members of the general public because "a law enforcement officer's duty to protect the citizenry is a general duty owed to the public as a whole." (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1121, 222 Cal.Rptr. 239.) Therefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection. (*Id.* at p. 1122, 222 Cal.Rptr. 239.)

[4] Section 11166, subdivision (a) creates such a duty.<sup>FN5</sup> This statute provides in relevant part any "employee of a child protective agency ... who has knowledge of or observes a child, in his or her professional capacity, or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse shall report the \*1186 known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." (Emphasis added.) "Reasonable suspicion" for purposes of the statute means "it \*\*772 is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training or experience, to suspect child abuse." (*Ibid.*) A police department is a "child protective agency" for purposes of this statute. (§ 11165.9.)

<sup>FN5</sup> When a demurrer is sustained without leave to amend, the question on appeal is whether the complaint states a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103, 101 Cal.Rptr. 745, 496 P.2d 817.) For this reason, it is immaterial Alec did not specifically rely on subdivision (a) of section 11166 in his second amended complaint. Furthermore, both sides have argued the applicability of subdivision (a) in their appellate briefs so there is no bar to our considering its provisions in reversing the trial court's judgment. (Gov.Code, § 68081.)

[5] As we read section 11166, subdivision (a), it imposes two mandatory duties on a police officer who

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receives an account of child abuse.

First, the statute imposes a duty to investigate. Although section 11166, subdivision (a) does not use the term "investigate," it clearly envisions some investigation in order for an officer to determine whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the county welfare department and the district attorney under section 11166, subdivision (i) and to the Department of Justice under section 11169, subdivision (a). The latter statute provides in relevant part: "A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded.... A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12." An "unfounded" report is one "which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse, as defined in Section 11165.6." (§ 11165.12, subd. (a).) "Child abuse" is defined in section 11165.6 as "a physical injury which is inflicted by other than accidental means on a child by another person."

The statute also imposes a duty to take further action when an objectively reasonable person in the same situation would suspect child abuse. Further action would entail reporting the "known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone" and preparing and sending "a written report thereof within 36 hours of receiving the information concerning the incident." (§ 11166, subd. (a).)

Contrary to the city's position, the duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse. The \*1187 language of the statute, prior cases and public policy all support this conclusion.

The statute itself states an employee of a child protective agency (e.g., a police officer) "who has knowledge of [a child] whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child

abuse[.]" (Emphasis added.) In contrast to the imperative language used in subdivision (a), the Legislature provided in subdivision (f): "Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency." (Emphasis added.) Comparing the obligatory language of subdivision (a) addressed to police officers and the permissive language of subdivision (f) addressed to the general public leads us to conclude the Legislature intended to impose a mandatory duty on police officers to investigate and report known or reasonably suspected child abuse.

There are sound public policy reasons for the Legislature's imposition of a mandatory reporting duty on police officers. Police officers, unlike ordinary citizens, are specially trained in the detection, investigation and response to cases of suspected child abuse. (§ 13517.) Moreover, police officers are in a unique position to discover \*\*773 cases of child abuse because the natural reaction of a relative, friend or neighbor who has observed signs of abuse is to call the police, just as Hector did here. The Child Abuse and Neglect Reporting Act contains an elaborate system for reporting and cross-reporting known and suspected cases of child abuse for the purpose of "protect [ing] children from abuse." (§ 11164, subd. (a).) This Legislative scheme is summarized in *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 257-260, 226 Cal.Rptr. 361 and we will not repeat it here. Suffice it to say, the whole system depends on professionals such as doctors, nurses, school personnel and peace officers who initially receive reports of child abuse to investigate and, where warranted, report those accounts to the appropriate agencies. If these professionals, including the police, simply ignore those reports, the Legislature's entire scheme of child abuse prevention is thwarted.

Case law too supports the conclusion the police have a mandatory duty to investigate and report accounts of child abuse.

In *Landeros v. Flood* (1976) 17 Cal.3d 399, 131 Cal.Rptr. 69, 551 P.2d 389, our Supreme Court recognized civil liability under former section 11161.5 for a physician's failure to make a required report of \*1188 child abuse. The plaintiff, an 11-month-old

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girl, was taken by her mother to the defendant doctor for treatment of a leg fracture. The complaint alleged the fracture and other injuries from which the child was suffering at the time gave the appearance of having been intentionally inflicted. The mother had no explanation for the injuries. Defendant did not report the child's injuries to the local police or welfare department. After the defendant treated and released the child she suffered further beatings at the hands of her mother and the mother's common law husband. The complaint alleged the defendant doctor was liable for the child's subsequent injuries predicated on common law negligence for failure to diagnose and treat plaintiff's battered child syndrome and negligence per se for failure to comply with the child abuse reporting requirements of former section 11161.5. Section 11161.5 declared that when it "appears to the physician" a minor has been the victim of child abuse the physician "shall report such fact by telephone and in writing, within 36 hours ..." to the local police or other appropriate agencies. (Stats.1975, ch. 226, § 1, p. 608; Landeros, supra, 17 Cal.3d at p. 407, 131 Cal.Rptr. 69, 551 P.2d 389; emphasis added.)<sup>FN6</sup> The court held allegations the defendant failed to make the report required by the statute supported an action for personal injury under the doctrine of negligence per se. (Id. at p. 413, 131 Cal.Rptr. 69, 551 P.2d 389.)

<sup>FN6</sup>. Section 11161.5 was subsequently repealed. A physician's reporting duty is now imposed by section 11166, subdivision (a) along with that of a police officer and other professionals.

[6] In our view, a physician's statutory duty to report when it "appears" to her a child has been subjected to abuse and a police officer's statutory duty to report when she "reasonably suspects" a child has been subjected to abuse are not rationally distinguishable for purposes of imposing liability under the negligence per se doctrine.

Our view is supported by the decision in Planned Parenthood Affiliates v. Van de Kamp (1986) 181 Cal.App.3d 245, 258-259, 226 Cal.Rptr. 361, in which the court held section 11166, subdivision (a) "imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children" and the Legislature "intends an investigation be conducted into every report received."

The city argues the burden on police departments would be intolerable if they were required to investigate and report every account of child abuse they receive, no matter how frivolous. But this is not what the child abuse reporting law requires.\*\*774 An officer is only required to investigate and report an account of child abuse when "it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training or experience, to suspect child abuse." (§ 11166, subd. (a).) An \*1189 officer is specifically directed not to pass on an "unfounded report," i.e., one which he or she determines to be false, inherently improbable, to involve only an accidental injury, or not to constitute child abuse as defined by statute. (§ 11165.12, subd. (a).) Given these statutory guidelines and the training in child abuse investigation afforded police officers (§ 13517), it is not unfair or against public policy to impose a mandatory duty on officers to comply with the investigation and reporting requirements of section 11166, subdivision (a).

[7][8] The city also argues before we can hold its officer owed a mandatory duty to Alec we must be able to say, as a matter of law, the breach of that duty was the proximate cause of Alec's injuries, citing (Novoa v. County of Ventura (1982) 133 Cal.App.3d 137, 144-145, 183 Cal.Rptr. 736.) We reject this argument. Causation is a question of fact, see discussion in Subpart B *infra*, and nothing in Novoa changes that well established rule. What the court said in Novoa was that if the mandatory duty at issue is not designed to protect against the kind of injury alleged in the complaint then the injury "is not proximately caused by the failure to perform the mandatory duty." (Id. at p. 145, 183 Cal.Rptr. 736, citation omitted.) Here, it is indisputable that the mandatory duty to investigate and report accounts of child abuse was intended to "protect children from child abuse." (§ 11164, subd. (a).) The complaint in the case before us alleges that despite Hector's account of Alec's abuse, Officer Doe performed no investigation and made no report and, as a result, Alec suffered further abuse. Therefore, the necessary linkage between the mandatory duty and the injury is established for pleading purposes.

The failure to investigate was clearly a breach of duty. Whether a reasonably prudent person receiving Hector's information would suspect child abuse and

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make a report is a question of fact to be determined at trial. We cannot say from the facts pled in the complaint that as a matter of law no reasonable person could form a suspicion of child abuse. In People v. Green (1997) 51 Cal.App.4th 1433, 59 Cal.Rptr.2d 913, for example, the police received an anonymous report the defendant was hitting two children in the front seat of a vehicle. Although the defendant was ultimately convicted on other charges, the Court of Appeal noted in its opinion: "Given the information possessed by the police, the officers had a duty to investigate the report of child abuse" citing sections 11164, et seq. (*id.* at p. 1438, 59 Cal.Rptr.2d 913.) The facts indicating child abuse are even stronger in the present case. Here, Alec's father reported he recently had seen Alec with a black eye, which neither Alec nor his mother could satisfactorily explain. He also related the fact that, according to Alec's neighbor, Alec had just received another beating from Gonzalez and this same neighbor had also observed Alec's \*1190 earlier black eye. The fact the neighbor had seen signs of Alec's earlier abuse lent credibility to the neighbor's report of current abuse.

For these reasons, we conclude the complaint adequately pled the violation of a statutory duty.

*B. Whether Officer Doe's Negligence Was A Cause Of Alec's Injuries Is A Question Of Fact Which Cannot Be Resolved At The Pleading Stage.*

[9][10] In order to recover under any negligence theory, the plaintiff must be able to allege and ultimately prove the defendant's breach of duty proximately caused the injury. Although normally the issue of causation is a question of fact and \*\*775 therefore not within the scope of a demurrer, the court may properly examine the proximate cause of the alleged injury at the demurrer stage. (Antique Arts Corp. v. City of Torrance (1974) 39 Cal.App.3d 588, 590-591, 114 Cal.Rptr. 332.) The city contends the complaint in this case shows on its face the proximate cause of Alec's injury was not Officer Doe's failure to investigate or report child abuse but rather the criminal acts of Gonzalez who administered the beatings. The city further contends as a matter of law the connection between Officer Doe's alleged failure to investigate or report the abuse of Alec and Alec's subsequent injuries is too conjectural or speculative to support a cause of action for negligence. We disagree with both of these arguments.

[11] We reject the city's contention Gonzalez's abuse of Alec can properly be considered an intervening or superseding cause which broke the chain of causation with respect to Alec's injuries.

In Landeros, supra, the court found subsequent beatings by plaintiff's mother and her common-law husband did not necessarily relieve a doctor from liability for his negligent failure to diagnose, treat and report to the proper authorities plaintiff's battered child syndrome. (17 Cal.3d at p. 411, 131 Cal.Rptr. 69, 551 P.2d 389.) Although the subsequent beatings were the immediate cause of the plaintiff's injuries, the court held an intervening act "does not amount to a 'superseding cause' relieving the negligent defendant of liability if [the intervening act] was reasonably foreseeable." (*Ibid.*) Quoting from section 449 of the Restatement Second of Torts the court stated: "If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby." (*Ibid.*, emphasis added.)

Applying these rules to the case before it, the Landeros court noted child abuse is generally not an isolated, atypical event "but part of an environmental mosaic of repeated beatings and abuse that will not only continue but \*1191 will become more severe unless there is appropriate medicolegal intervention." (*Id.* at p. 412, 131 Cal.Rptr. 69, 551 P.2d 389, fn. omitted.) Therefore, the court concluded, it was error for the trial court to rule as a matter of law defendant's negligence was not the proximate cause of plaintiff's injuries. Rather, "[p]laintiff is entitled to prove by expert testimony that defendants should reasonably have foreseen that her caretakers were likely to resume their physical abuse and inflict further injuries on her if she were returned directly to their custody." (*Ibid.*, fn. omitted.)

In the present case, the complaint alleges Officer Doe negligently failed to investigate and take further action after receiving a credible report of child abuse from the child's father. Assuming Gonzalez's future criminal conduct was the foreseeable result of Alec remaining in his custody a question of fact for the jury—Officer Doe and the City of Alhambra are not relieved of liability by a superseding cause of injury.

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We now turn to the city's contention Alec cannot establish that but for Officer Doe's failure to investigate or report past instances of child abuse future abuse would have been prevented. The city asserts whether an investigation or report would have prevented future abuse of Alec by Gonzalez is purely speculative because it is unknowable what child welfare workers would have done with Officer Doe's report had it been made.

The city relies on *Antique Arts Corp. v. City of Torrance, supra*, a case in which the court found no governmental liability for a police dispatcher's 10-minute delay in broadcasting a robbery-in-progress call. The court observed: "Whether the immediate presence of police on the scene of a robbery could have prevented it and/or \*\*776 resulted in the recovery of the loot after the consummation of a robbery, or whether immediate police response to a concurrent transmission of the alert could have prevented the robbery or recovered the loot is a subject replete with speculation and conjecture." (39 Cal.App.3d at pp. 590-591, 114 Cal.Rptr. 332.) Therefore, "the presence or absence of police before, during or after the robbery has in our opinion no such causal or proximate connection with a loss resulting from a consummated robbery as to result in government liability." (*Id.*, at p. 591, 114 Cal.Rptr. 332.)

The city's reliance on *Antique Arts* is misplaced. Unlike police officers responding to a robbery report, welfare workers responding to a child abuse report are governed by statutory standards. Welfare & Institutions Code section 16501, subdivision (f) provides when a county welfare department receives a report of child abuse under section 11166 it "shall respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days." In Alec's case, the subsequent beating took place six \*1192 weeks after his father's report of child abuse. Thus, the county welfare department would have had ample time to respond and provide Alec with protection from further abuse had Officer Doe reported the facts related by Alec's father.

An additional factor weighs in Alec's favor on the causation issue. As previously mentioned, the Legislature's declared intent and purpose in enacting the Child Abuse and Neglect Reporting Act was "to protect children from abuse." (§ 11164, subd. (a).) Obvi-

ously the Legislature believed compliance with the investigating and reporting requirements of the Act would be a substantial factor in preventing child abuse. Conversely, the failure to investigate or report occurrences of child abuse greatly enhances the chances of repeated and more severe abuse, as discussed in (*Landeros, supra*, 17 Cal.3d at p. 412, 131 Cal.Rptr. 69, 551 P.2d 389.)

The Supreme Court, in *Landeros*, held the plaintiff was entitled to prove by way of expert testimony a reasonably prudent physician would have reported plaintiff's injuries to the proper authorities. (17 Cal.3d at p. 410, 131 Cal.Rptr. 69, 551 P.2d 389.) Taking this holding the next logical step, we believe Alec is entitled to prove by way of expert testimony a reasonably prudent social worker would have responded to the alleged facts of his abuse in a way which would have prevented his subsequent injuries. Considering the allegations set forth in the complaint, such as the physical abuse suffered by Alec, his black eye and the drug use by his mother and Gonzalez, it is not difficult to believe the county welfare department would have taken affirmative steps to protect Alec. Whether or not the department would have done so is not a matter of speculation but a question of fact to be determined at trial through expert testimony.

For these reasons, we cannot say at the pleading stage of this case Alec is unable to establish future abuse would have been prevented by a proper investigation and report on the part of the Alhambra police department and Officer Doe.

## II. NEITHER THE CITY NOR OFFICER DOE IS IMMUNE FROM LIABILITY.

Despite the mandatory language of section 11166, subdivision (a), the city contends it is immune from liability because as a matter of public policy the investigation of child abuse should be treated as a discretionary \*1193 act and because a city cannot be held liable for its employees' failure to enforce a law.<sup>FN7</sup> We find no merit in either of these arguments.

FN7. Government Code section 815.2(b) states: "Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the em-

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ployee is immune from liability.”

Government Code section 820.2 states: “except as otherwise provided by statute a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.”

Government Code Section 818.2 provides: “A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.”

Government Code section 821 provides: “A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment.”

\*\*777 In arguing investigation of child abuse should be treated as a discretionary act as a matter of public policy, the city relies on (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 271 Cal.Rptr. 513 (*Alicia T.*)). *Alicia T.*, however, is clearly distinguishable from the present case.

*Alicia T.* was an action against a county and two of its social workers by the parents of a child whom defendants removed from the home due to suspected child abuse reported by a hospital. The case did not involve any claim of liability under the Child Abuse and Neglect Reporting Act. Indeed, the plaintiffs conceded “the personnel at [the hospital] properly reported the suspicion of abuse to the sheriff’s department.” (222 Cal.App.3d at p. 877, 271 Cal.Rptr. 513.) Liability in *Alicia T.* was sought under 42 U.S.C. Section 1983 on the theory the county removed Alicia from her home and prevented her return without sufficient probable cause. (*Id.* at p. 880, 271 Cal.Rptr. 513.) In holding social workers enjoy absolute immunity from liability for removing a child from the parents’ home, the court noted the important societal function played by social workers in this context. Social workers, the court explained, must make quick decisions on incomplete information as to whether to remove a child from parental custody. Therefore, granting social workers anything less than absolute immunity would “negate the purpose of

child protective services by postponing prevention of further abuse to avoid liability.” (*Id.* at p. 881, 271 Cal.Rptr. 513, quoting from *Jenkins v. County of Orange* (1989) 212 Cal.App.3d 278, 287, 260 Cal.Rptr. 645.)

[12] In our case, statutory liability is pled under section 11166, subdivision (a) which establishes a mandatory duty on employees of child protective agencies, including police officers, to investigate and take further action when warranted. Unlike the discretion afforded the social workers who responded to the sheriff’s report of suspected abuse in *Alicia T.*, there is no discretion involved in initiating the investigating and reporting process itself. (See discussion in Part I, *supra.*) Officer Doe had a mandatory duty to investigate \*1194 and then report if it was objectively reasonable for him to suspect child abuse.

[13][14] The city next argues Government Code sections 818.2 and 821 relieve it and Officer Doe, respectively, of any liability for the failure to enforce a law. However, “[t]he statutes declaring immunity for damages caused by law enforcement failures encompass only discretionary law enforcement activity [citation].” (*Roseville Community Hosp. v. State of California* (1977) 74 Cal.App.3d 583, 587, 141 Cal.Rptr. 593, and see cases cited therein.) The immunity statutes do not bar liability for breach of a mandatory law enforcement duty. (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 916-917, 136 Cal.Rptr. 251, 559 P.2d 606.) As explained above, this case does not involve the exercise of discretion on the part of Officer Doe or a failure to enforce the law, but rather a failure to comply with a mandatory duty imposed by law.

We conclude, therefore, the allegations in the complaint do not give rise to a defense of sovereign immunity on the part of the city.

#### DISPOSITION

The judgment is reversed and the cause remanded for further proceedings consistent\*\*778 with this opinion. Appellant is awarded costs on appeal.

LILLIE, P.J., and WOODS, J., concur.

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Daily Op. Serv. 8676, 1999 Daily Journal D.A.R.  
11,011

END OF DOCUMENT

State of California  
Office of Administrative Law

In re:  
Department of Justice

NOTICE OF APPROVAL OF REGULATORY  
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 11, California Code of Regulations

OAL File No. 2009-1118-01 S

Amend sections: 900, 901, 902, 903, 904,  
905, 906

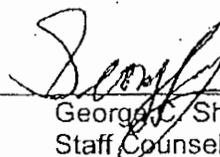
Repeal sections: 907, 908, 909, 910, 911

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This regulatory action amends provisions requiring local agencies to report child abuse and neglect to the Child Abuse Central Index (CACI) in order to provide more clear guidance to local agencies regarding the reporting process.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/5/2010.

Date: 1/5/2010



George L. Shaw  
Staff Counsel

For: SUSAN LAPSLEY  
Director

Original: Jerry Brown  
Copy: Madelyn Childs

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW  
**REGULAR**  
NOTICE PUBLICATION/REGULATIONS SUBMISSION (See Instructions on reverse)

For use by Secretary of State

STD. 400 (REV. 4-99)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2008-1201-01	REGULATORY ACTION NUMBER 2009-1118-015	EMERGENCY NUMBER
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ENDORSED FILED  
IN THE OFFICE OF

2010 JAN -5 PM 3:16

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only

2009 NOV 18 PM 3:09

OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY Department of Justice	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER ( )	FAX NUMBER (Optional) ( )
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 08-1151-2	PUBLICATION DATE 12-19-2008

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Amendment to Child Abuse Reports Recordkeeping	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) ENDORSED APPROVED
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)	JAN 05 2010
SECTION(S) AFFECTED (List all section number(s) individually)	ADOPT
TITLE(S) Title 11	AMEND 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, <del>910, 911</del> Administrative Law
	REPEAL 907, 908, 909, 910, 911 <i>per agency request</i>

3. TYPE OF FILING	Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4)	Emergency (Gov. Code, § 11346.1(h))	Emergency Readopt (Gov. Code, § 11346.1(h))	Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above.

<input type="checkbox"/> Print Only	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)	<input type="checkbox"/> Other (specify)
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4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)  
May 12, 2009 to June 01, 2009 *per agency request*

5. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code, §§ 11343.4, 11346.1(d))	<i>per agency request</i>
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	Department of Finance (Form STD. 399) (SAM §6660)	Fair Political Practices Commission	State Fire Marshal
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. CONTACT PERSON Madelyn Childs, DOJ A I	TELEPHONE NUMBER (916) 227 3263	FAX NUMBER (Optional) (916) 227 4094	E-MAIL ADDRESS (Optional)
--	------------------------------------	---	---------------------------

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>James Francis</i>	DATE 11/10/09
TYPED NAME AND TITLE OF SIGNATORY James Francis, Chief Deputy Attorney General	

CALIFORNIA DEPARTMENT OF JUSTICE  
DIVISION OF CALIFORNIA JUSTICE INFORMATION SERVICES  
CHILD PROTECTION PROGRAM  
P.O. BOX 903387  
SACRAMENTO, CA 94203-3870

TITLE 11. LAW  
DIVISION 1. ATTORNEY GENERAL  
CHAPTER 9. REPORT OF CHILD ABUSE  
ARTICLE 1. ADMINISTRATION OF THE CHILD ABUSE CENTRAL INDEX

**Section 900. Scope**

The regulations in this article are enacted pursuant to Penal Code sections 11169 and 11170 and set forth the procedures used by the California Department of Justice (DOJ) to administer the Child Abuse Central Index (CACI). The CACI is created pursuant to the Child Abuse and Neglect Reporting Act (CANRA). (Penal Code section 11164 et seq.)

CANRA requires that instances of suspected child abuse or neglect be investigated by county welfare departments or local law enforcement agencies. When an agency conducting an abuse or neglect investigation determines that the allegations of abuse or severe neglect are not unfounded as defined by CANRA, the agency must submit a report in writing to the DOJ indicating whether the agency's finding is inconclusive or substantiated as these terms are defined by CANRA (Penal Code section 11169(a)). The DOJ is required to prepare a form to be used by the investigating agency to report its finding to the DOJ that allegations of child abuse or severe neglect are not unfounded. The CACI contains the information submitted to the DOJ by the investigating agencies on the Child Abuse or Severe Neglect Indexing Form (BCIA 8583).

The submitting investigating agencies are solely responsible for the accuracy and completeness of the information required on the BCIA 8583. The DOJ is responsible for ensuring that the CACI accurately reflects the information the DOJ receives on the reporting form from the submitting agency. The information in CACI is confidential and shall only be provided to entities authorized to receive it pursuant to Penal Code sections 11167.5, 11170 and 11170.5 or any other provision of law.

These regulations broadly describe how CACI information is collected and disseminated, and include the BCIA 8583 that the investigating county welfare departments and local law enforcement agencies must use to report its finding of substantiated or inconclusive child abuse or severe neglect.

NOTE: Authority cited: Penal Code section 11170(a)(1). Penal Code Reference: Section 11170(a)(1).

**Section 901. Form Required for Submitting Report of Suspected Child Abuse or Severe Neglect.**

(a) Agencies required to report instances of known or suspected child abuse or severe neglect for inclusion in CACI pursuant to Penal Code 11169 shall make their report of known or suspected abuse or severe neglect on the BCIA 8583. All information on the BCIA 8583 must be fully and accurately completed by the submitting agency.

(b) The following BCIA 8583 shall be used for submitting reports of child abuse or severe neglect to the DOJ:

**DEPARTMENT OF JUSTICE (DOJ)**

**CHILD ABUSE OR SEVERE NEGLECT INDEXING FORM (BCIA 8583)**

**GUIDELINES FOR USE AND COMPLETION**

(For specific legal requirements regarding reporting abuse or severe neglect, refer to California Penal Code sections 11164 through 11174.3.)

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**REPORTING CHILD ABUSE OR SEVERE NEGLECT TO DOJ**

An agency subject to the requirements of Penal Code sections 11165.9 and 11169(a) must report to the DOJ every incident of suspected child abuse or severe neglect for which it conducts an investigation and for which it determines that the allegations of child abuse or severe neglect are not unfounded. The agency must report on the Child Abuse or Severe Neglect Indexing Form (BCIA 8583) indicating the agency's finding of possible child abuse or severe neglect.

Submit the completed BCIA 8583 to the DOJ as soon as possible after completion of the investigation because the information may contribute to the success of another investigation. It is essential that the information on the form be complete, accurate and timely to provide the maximum benefit in protecting children and identifying instances of suspected abuse or severe neglect.

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**WHAT INCIDENTS MUST BE REPORTED**

Abuse of a minor child, i.e., a person under the age of 18 years, involving any one of the below abuse types: (Refer to Penal Code sections 11165.1 through 11165.6 for definitions.)

- Physical injury
- Mental/emotional suffering
- Sexual (abuse, assault and exploitation)
- Severe neglect
- Willful harming/endangerment
- Unlawful corporal punishment/injury
- Death

---

**GENERAL INSTRUCTIONS**

- Indicate whether you are submitting an INITIAL REPORT or an AMENDED REPORT by checking the appropriate box at the top of the form.
- All information blocks contained on the BCIA 8583 should be completed by the submitting child protective agency. If information is not available, indicate "UNK" in the applicable field.
- Section B, block 2. The finding that allegations of child abuse or severe neglect are not unfounded is. SUBSTANTIATED – Defined by Penal Code section 11165.12(b) to mean circumstances where the evidence makes it more likely than not that child abuse or neglect, as defined, occurred. INCONCLUSIVE – Defined by Penal Code section 11165.12(c) to mean circumstances where child abuse or neglect are determined not to be unfounded, as defined, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined, has occurred.

NOTE: Authority cited: Penal Code section 11170(a)(1). Reference: Penal Code sections 11169(a) and 11170(a)(1).

### Section 902. Responsibilities of Agencies Submitting Reporting Form

(a) In order to fully meet its obligations under CANRA, an agency required to report instances of known or suspected child abuse or severe neglect must complete all of the information on the BCIA 8583. Only information from a fully completed BCIA 8583 will be entered into the CACI. Incomplete forms will be returned to the submitting agency and the agency must resubmit a completed form to fulfill its reporting responsibilities under CANRA and Penal Code section 11169(a). Penal Code section 11170(a)(2) provides that the submitting agency is responsible for the accuracy and completeness of the report required by CANRA and states that the DOJ is only responsible for ensuring that the CACI accurately reflects the report it receives from the submitting agency. Accordingly, the DOJ presumes that the information provided by the submitting agency on the BCIA 8583 is accurate. The DOJ does not conduct an investigation to verify the accuracy of the information submitted nor does it investigate the quality or accuracy of the abuse or severe neglect investigation conducted by the submitting agency.

(b) A submitting agency must immediately notify the DOJ of any changes to information previously provided on a BCIA 8583 by submitting an amended BCIA 8583. Instances when an amended BCIA 8583 is required includes, but is not limited to, a circumstance where the submitting agency, acting pursuant to a court order or otherwise, changes a prior finding of substantiated or inconclusive abuse or severe neglect to one of unfounded. Conversely, if an original finding of an unfounded allegation of abuse or severe neglect is later reclassified as inconclusive or substantiated, the investigating agency must submit a BCIA 8583 to meet its reporting obligations under CANRA.

(c) A primary purpose of CACI is to permit authorized entities to locate prior reports detailing investigations of known or suspected child abuse or severe neglect. The submitting agency must permanently retain investigative reports for which it has submitted a BCIA 8583, or earlier version thereof, if the investigative report substantiated allegations of abuse or severe neglect unless the agency, acting pursuant to court order or otherwise, determines that the allegations investigated are unfounded. If the investigative report was inconclusive about the existence of child abuse or severe neglect, the report must be retained for ten years unless there is an investigation of subsequent allegations of child abuse or severe neglect against the same child or by the same suspect(s) which determines the allegations are not unfounded. If the investigation of subsequent allegations is inconclusive, the original investigative report and the subsequent investigative report must be retained for ten years after filing the BCIA 8583 for the subsequent instance of abuse or severe neglect with DOJ. When the subsequent investigation determines that the subsequent allegations of abuse or severe neglect are substantiated, all prior remaining investigative reports involving the same victims or suspects must be retained permanently.

(d) If a submitting agency has lost, destroyed or otherwise no longer retains or pursuant to court order has sealed the investigatory report(s) for a prior report that are indexed on CACI, the submitting agency shall immediately notify the DOJ of the loss, destruction sealing, or non-retention of the investigatory report by filing an amended BCIA 8583 indicating that the investigatory report is no longer retained. The DOJ will remove from CACI the names of

individuals identified in the lost, destroyed sealed or no longer retained investigatory report(s) indexed in CACI.

NOTE: Authority cited: Penal Code section 11170(a)(1). Reference: Penal Code sections 11169(a), 11169(c), 11170(a)(1), 11170(a)(2), and 11170(a)(3).

**Section 903. Entities Authorized to Access CACI Information May Not Make Determinations Based Solely on the CACI Listing.**

A primary purpose of CACI is to permit authorized entities to locate prior reports detailing investigations of known or suspected child abuse or severe neglect. An entity receiving information from CACI is responsible for reviewing the underlying investigative report(s) from the agency submitting the CACI report and making an independent assessment regarding the merits of the investigating agency's finding of substantiated or inconclusive child abuse or severe neglect. Penal Code section 11170(b)(9)(A) provides that an entity receiving CACI information is 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, employment, licensing, adoption or placement of a child. An entity receiving CACI information shall not act solely upon CACI information or the fact that an individual is listed on CACI to grant or deny any benefit or right.

NOTE: Authority cited: Penal Code section 11170(a)(1), 11170(b)(9)(A), and 11170(e)(2). Reference: Penal Code 11167.5, 11169(a), 11170(b)(9)(A), 11170(c) and 11170(e)(2).

**Section 904. DOJ Notification When a Submitting Agency Provides Names Identified in Existing CACI Entries**

(a) When the DOJ receives a completed BCIA 8583 identifying the name of a suspect or victim that results in a possible match with names contained in the CACI, the DOJ will notify the submitting agency in writing of the prior report in CACI which has the same possible suspect or victim match. The notification will include the name of the prior submitting agency, the submitting agency's report number for the prior report, the date of the report and the determination made by that agency as to whether the allegation of abuse or severe neglect was inconclusive or substantiated. The DOJ will also provide notification and the above information to prosecutors who request notification of subsequent CACI entries regarding victims or suspects identified in prior investigative reports entered in CACI.

(b) If a new report contains a suspect match with a prior report of inconclusive abuse or severe neglect, the DOJ will notify in writing the agency submitting the prior report that it must retain its investigatory file(s) for the inconclusive finding of abuse or severe neglect for at least ten (10) years from the date the new report is entered into CACI.

(c) The notifications set forth in subdivisions (a) and (b) will be made even if the agency submitting the new report is the same agency that submitted the prior report.

NOTE: Authority cited: Penal Code section 11170(a)(1). Reference: Penal Code sections 11169(c), 11170(b)(1)-(10), 11170(c), 11170(d), and 11170(e).

**Section 905. Releasing CACI Information in Response to Inquiries From Authorized Entities.**

The information contained in CACI is confidential and will only be disclosed to those individuals or entities authorized by law to receive it, including but not limited to:

(a) An agency conducting an investigation of child abuse or severe neglect, or a district attorney making a request, will be provided CACI information pertaining to the specific individual(s) being investigated. An agency conducting an ongoing investigation of known or suspected child abuse or severe neglect may request, and shall be provided, CACI information regarding prior investigations by the same or other agencies before completing its current ongoing investigation and submitting the BCIA 8583 required for its current ongoing investigation. Requests must be submitted on a Facsimile Inquiry For Child Abuse Central Index (CACI) Check BCIA 4084 (Rev. 3/09) form. Forms can be found on the California Law Enforcement Website (CLEW) or upon request to the DOJ.

(b) Authorized persons or entities making inquiries for purposes such as employment, licensing, adoption or child placement will be provided CACI information pertaining to the suspect only. Information will include the name of the submitting agency, the submitting agency's report number and the date of the report. Requests must be submitted via live scan or on a Facsimile Inquiry For Child Abuse Central Index (CACI) Check BCIA 4084 (Rev.3/09) form. The form is available from the DOJ website or upon request to the DOJ.

NOTE: Authority cited: Penal Code section 11170(a)(1). Reference: Penal Code-sections 11167, 11167.5, 11169, 11170(b)(1)-(10), 11170(c), 11170(d), 11170(e), and 11170.5.

**Section 906. Disclosure of CACI Information To Members of the Public**

(a) When a notarized Child Abuse Central Index Self Inquiry Request (Rev. 09/09) form satisfying Penal Code section 11170(f)(1) (available from the DOJ website or upon request from the DOJ) is received from a member of the public to determine if he or she is listed in CACI, and the inquiry results in a possible match to a suspect or victim listed in CACI, the DOJ will:

(1) notify the person in writing that he/she is listed in CACI as a suspect or victim and provide the name of the submitting agency, the report number for the submitting agency's investigative file and the date of the report. The DOJ will also notify the person of disseminations of his/her CACI information conducted for both investigative and applicant purposes. The notification will include the date of the dissemination, the agency to which the record was disseminated, and the purpose of the dissemination. The DOJ will automatically provide a copy of the personal information maintained in the CACI relating to the requesting party for his or her examination.

(b) When a notarized written request is received by DOJ (see Penal Code section 11170(g)) from a person listed in the CACI only as a victim of child abuse or neglect who wishes to be removed from CACI, and that person is 18 years of age or older, the DOJ will also:

(1) remove the person's name, address, social security number and date of birth (and any other descriptive information about the person) from the CACI. The DOJ will also notify the person in writing that his/her name and descriptor information have been removed from the CACI.

(c) A person may inspect, review, dispute, amend and correct information contained in CACI as specified in the Information Practices Act of 1977. However, the decision whether to list a person in CACI rests solely with the submitting agency and any challenges regarding placing a person on CACI must be filed with the submitting agency.

NOTE: Authority cited: Penal Code section 11170(a)(1). Reference: Penal Code sections 11170(f) and 11170(g). Civil Code sections 1798.25, 1798.32, 1798.33, 1798.34, and 1798.35.

TO BE TYPED OR PRINTED - PRESS FIRMLY - DO NOT USE FELT PEN

# CHILD ABUSE INVESTIGATION REPORT

To be Completed by Investigating Child Protective Agency  
Pursuant to Penal Code Section 11169  
(SHADED AREAS MUST BE COMPLETED)

R  
C  
N  
  
A  
G  
Y

FOR DOJ USE ONLY

A. INVESTIGATING AGENCY	1. INVESTIGATING AGENCY (Enter complete name and check type): <input type="checkbox"/> POLICE <input type="checkbox"/> WELFARE <input type="checkbox"/> SHERIFF <input type="checkbox"/> PROBATION		2. AGENCY REPORT NO./CASE NAME:	
	3. AGENCY ADDRESS: Street City Zip Code		4. AGENCY TELEPHONE: EXT: ( )	
	5. NAME OF INVESTIGATING PARTY: TITLE		6. DATE REPORT COMPLETED: MO DA YR	
	7. AGENCY CROSS-REPORTED TO:		8. PERSON CROSS-REPORTED TO:	
	9. DATE CROSS-REPORTED: MO DA YR		10. ACTION TAKEN (check only one box): <input type="checkbox"/> (1) SUBSTANTIATED (Credible evidence of abuse) <input type="checkbox"/> (2) INCONCLUSIVE (Insufficient evidence of abuse, not unfounded)	
	10A. SUPPLEMENTAL INFORMATION (Attach copy of original report) <input type="checkbox"/> (a) INCONCLUSIVE <input type="checkbox"/> (c) ADDITIONAL INFORMATION <input type="checkbox"/> (b) UNFOUNDED (false report, accidental, improbable)		11. Active investigation conducted per PC 11169(a)? <input type="checkbox"/> Yes <input type="checkbox"/> No*    Victim(s) contacted? <input type="checkbox"/> Yes <input type="checkbox"/> No*    Suspect(s) contacted? <input type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> No Suspects Witness(es) contacted? <input type="checkbox"/> Yes <input type="checkbox"/> No*    No witnesses    Explain in comments field A.12.	
12. COMMENTS:				

B. INCIDENT INFORMATION	1. DATE OF INCIDENT: MO DA YR	2. TIME OF INCIDENT:	3. LOCATION OF INCIDENT:
	4. NAME OF PARTY REPORTING INCIDENT: TITLE:	5. EMPLOYER:	6. TELEPHONE: ( )
	7. TYPE OF ABUSE (check one or more): <input type="checkbox"/> (1) PHYSICAL <input type="checkbox"/> (2) MENTAL <input type="checkbox"/> (3) SEXUAL <input type="checkbox"/> (4) SEVERE NEGLECT <input type="checkbox"/> (5) GENERAL NEGLECT		
	8. IF ABUSE OCCURRED IN OUT-OF-HOME CARE, CHECK TYPE <input type="checkbox"/> (1) FAMILY DAY CARE <input type="checkbox"/> (2) CHILD CARE CENTER <input type="checkbox"/> (3) FOSTER FAMILY HOME <input type="checkbox"/> (4) SMALL FAMILY HOME <input type="checkbox"/> (5) GROUP HOME OR INSTITUTION-Enter name and address:		

C. INVOLVED PARTIES	VICTIMS	1. NAME: Last First Middle AKA		D O B	MO DA YR	APPROX. AGE:	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
		ADDRESS: Street City Zip Code		DID VICTIM'S INJURIES RESULT IN DEATH? <input type="checkbox"/> YES <input type="checkbox"/> NO		NATURE OF INJURIES:			
		PRESENT LOCATION OF VICTIM:		TELEPHONE NUMBER:		IS VICTIM DEVELOPMENTALLY DISABLED [4512(a) W&I]? <input type="checkbox"/> YES <input type="checkbox"/> NO			
		2. NAME: Last First Middle AKA		D O B	MO DA YR	APPROX. AGE:	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
		ADDRESS: Street City Zip Code		DID VICTIM'S INJURIES RESULT IN DEATH? <input type="checkbox"/> YES <input type="checkbox"/> NO		NATURE OF INJURIES:			
		PRESENT LOCATION OF VICTIM:		TELEPHONE NUMBER:		IS VICTIM DEVELOPMENTALLY DISABLED [4512(a) W&I]? <input type="checkbox"/> YES <input type="checkbox"/> NO			
	SUSPECTS	1. NAME: Last First Middle AKA		D O B	MO DA YR	APPROX. AGE:	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
		ADDRESS: Street City Zip Code		HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER:	DRIVER'S LICENSE NUMBER:
		RELATIONSHIP TO VICTIM: <input type="checkbox"/> (1) PARENT/STEPPARENT <input type="checkbox"/> (2) SIBLING <input type="checkbox"/> (3) OTHER RELATIVE <input type="checkbox"/> (4) FRIEND/ACQUAINTANCE <input type="checkbox"/> (5) STRANGER							
		Suspect given written notice per PC 11169(b) <input type="checkbox"/> Yes <input type="checkbox"/> No    Date notice given: MO DA YR    If notice not given, explain in comments field A.12.							
		2. NAME: Last First Middle AKA		D O B	MO DA YR	APPROX. AGE:	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
		ADDRESS: Street City Zip Code		HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER:	DRIVER'S LICENSE NUMBER:
RELATIONSHIP TO VICTIM: <input type="checkbox"/> (1) PARENT/STEPPARENT <input type="checkbox"/> (2) SIBLING <input type="checkbox"/> (3) OTHER RELATIVE <input type="checkbox"/> (4) FRIEND/ACQUAINTANCE <input type="checkbox"/> (5) STRANGER									
Suspect given written notice per PC 11169(b) <input type="checkbox"/> Yes <input type="checkbox"/> No    Date notice given: MO DA YR    If notice not given, explain in comments field A.12.									
OTHER	1. NAME: Last First Middle		<input type="checkbox"/> (1) PARENT/STEPPARENT <input type="checkbox"/> (2) SIBLING	D O B	MO DA YR	APPROX. AGE:	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
	2. NAME: Last First Middle		<input type="checkbox"/> (1) PARENT/STEPPARENT <input type="checkbox"/> (2) SIBLING	D O B	MO DA YR	APPROX. AGE:	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	

RACE CODES: W-White, B-Black, H-Hispanic, I-American Indian, F-Filipino, P-Pacific Islander, C-Chinese, J-Japanese, A-Other Asian, Z-Asian Indian, D-Cambodian, G-Guamanian, U-Hawaiian, K-Korean, L-Latino, S-Samoan, V-Vietnamese, O-Other, X-Unknown  
 CHECK HERE IF ADDITIONAL SHEET(S) IS ATTACHED.

AB 2380  
Page 1

Date of Hearing: April 13, 2010  
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Tom Ammiano, Chair

AB 2380 (Lowenthal) - As Amended: March 24, 2010

SUMMARY : Clarifies that a "reasonable suspicion" that a child has been a victim of child abuse or neglect does not require certainty that a child has been abused, and may be based on credible information from other individuals for the purpose of making a report under the Child Abuse and Neglect Reporting ACT (CANRA).

EXISTING LAW :

- 1) Requires that any mandated reporter who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows, or reasonably suspects, has been the victim of child abuse shall report that incident immediately to a specified child protection agency by telephone, and requires a written report be sent within 36 hours. [Penal Code Section 11166(a).]
- 2) Requires that reports of suspected child abuse or neglect shall be made by a mandated reporter to any police or sheriff's department, a county probation department if designated by the county to receive mandated reports, or the county welfare department. (Penal Code Section 11165.9.)
- 3) Defines a "mandated reporter" as specific child-care custodians, health practitioners, law enforcement officers, and other medical and professional persons. (Penal Code Section 11165.7.)
- 4) Provides that the reporting duties under CANRA are individual, no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanctions for making the report. [Penal Code Section 11166(g)(1).]

5)Provides that any mandated reporter who fails to report an instance of known or reasonably suspected child abuse or neglect as required is guilty of a misdemeanor, punishable by up to six months in the county jail; by a fine of \$1,000; or by both imprisonment and fine. [Penal Code Section 11166(b).]

6)Requires specified reporting agencies to forward to the Department of Justice (DOJ) a report of every case of suspected child abuse or neglect which is determined not to be unfounded; and if a previously filed report proves to be unfounded, the DOJ shall be notified in writing and shall not retain that report. [Penal Code Section 11169(a).]

7)Requires at the time a reporting agency forwards a report of suspected child abuse or neglect to the DOJ, the agency notify the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI). [Penal Code Section 11165(b).]

8)Requires the DOJ to maintain an index of all reports of child abuse and neglect submitted by the specified reporting agencies. The index shall be continually updated and shall not contain any reports determined to be unfounded. [Penal Code Section 11170(a)(1).]

9)States that the DOJ shall act only as a repository of the suspected child abuse or neglect reports maintained in CACI, and that the reporting agencies are responsible for the accuracy, completeness, and retention of reports. [Penal Code Section 11170(a)(2).]

10)Requires that information from an inconclusive or unsubstantiated suspected child abuse or neglect report shall be deleted from CACI after 10 years if no subsequent report concerning the suspected child abuser is received within the 0-year period. [Penal Code Section 11170(a)(3).]

FISCAL EFFECT : Unknown

COMMENTS : According to the author, "The Los Angeles City Attorney's office has discovered through their work with the Inter-Agency Council on Child Abuse and Neglect that many mandated reporters are unclear on constitutes 'reasonable suspicion'. Many have reported that they feel they have to wait until they have concrete evidence before they can notify the authorities.

"This lack of clarity has resulted in many mandated reporters failing to properly report their reasonable suspicions of child abuse or neglect. This is particularly evident among medical professionals, where reports are delayed by hours or even days while a specific medical diagnosis is determined, resulting in destruction of crime scene evidence and greater difficult for law enforcement in locating perpetrators."

This bill clarifies that 'reasonable suspicion' does not require certainty that child abuse or neglect has occurred and that it may be based on any information considered credible by the reporter, including statements by others.

REGISTERED SUPPORT / OPPOSITION :

Support

Los Angeles City Attorney

Opposition

None

Analysis Prepared by : Gregory Pagan / PUB. S. / (916)  
319-3744

## COMMISSION ON STATE MANDATES

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August 12, 2011

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Ms. Diana McDonough  
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 70 Washington Street, Suite 205  
 Oakland, CA 94607

Ms. Juliana Gmur  
 MAXIMUS  
 2380 Houston Ave  
 Clovis, CA 93611

*And Interested Parties and Affected State Agencies (see mailing list)*

**RE: Request for Comments**

Regarding Reasonable Reimbursement Methodologies  
 in Relation to the Following Claims:

*Behavioral Intervention Plans*, CSM 4464

San Diego Unified School District, San Joaquin County Office of Education  
 and Butte County Office of Education, Claimants

*Habitual Truants*, 09-PGA-01, 01-PGA-06 (CSM-4487 and CSM-4487A)

San Jose Unified School District, Requestors

*Voter Identification Procedures*, 03-TC-23

County of San Bernardino, Claimant

Dear Mr. Petersen, Ms. McDonough, and Ms. Gmur:

Thank you for your participation on July 27, 2011 at the prehearing conference conducted by the Commission on State Mandates (Commission) to discuss reasonable reimbursement methodologies (RRMs) as they relate to the above-named matters, and to future requests for RRMs. Staff sought input regarding how "cost efficient," as that term is used in Government Code section 17518.5, should be applied to proposed RRMs. The participants in the prehearing conference provided helpful input on this issue and into the draft staff analysis on the proposed parameters and guidelines amendment for the *Habitual Truants* program. The draft staff analysis was issued on June 9, 2011. Subsequent to the prehearing, Commission staff reviewed the draft staff analysis based on the input received and now seeks briefing on the following questions:

1. Government Code section 17518.5(a) states: "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514." Section 17514 states: "'costs mandated by the state' means any increased costs which a local agency or school district is required to incur" to fulfill the requirements of a state mandate.

The California Constitution and section 17514 require that each local agency be reimbursed for its mandated costs. An RRM is a tool to facilitate the reimbursement process. Staff believes it is constitutionally permissible to develop an RRM unit cost that reasonably reimburses each local agency even if

some local agencies receive more and some local agencies receive less than the RRM unit cost. The Commission recently found in the *Municipal Stormwater* program that the RRM unit cost of \$6.74 was reasonable even though the unit costs used to develop that figure ranged from a low of \$2.02 to a high of \$14.46. The Commission implicitly found that \$6.74 was a constitutionally permissible figure even though one claimant whose figures were used to calculate the RRM figure had actual costs of \$14.46. Under the RRM, that claimant would be entitled to less than half of its actual costs.

*Question:* At some point is the range of figures used to develop the unit cost so wide that it violates the constitutional requirement that local agencies be reimbursed for their mandate-related costs?

2. Government Code section 17518.5(c) states: "A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner."

*Question 1:* How should "cost-efficient" be defined?

*Question 2:* What does this section require be cost-efficient? Stated another way, what does a requestor need to show to demonstrate that its proposed RRM unit cost meets the requirement of section 17518(c)?

We invite all parties, interested parties, and interested persons to submit comments on these questions or any related issues by Wednesday, **September 2, 2011**.

Please contact me at (916) 323-3562 if you have questions.

Sincerely,



Drew Bohan  
Executive Director

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

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December 20, 2011

Ms. Nancy Patton  
Acting Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Ms. Patton:

**LOS ANGELES COUNTY'S COMMENTS  
ON REASONABLE REIMBURSEMENT METHODOLOGIES  
AS REQUESTED BY THE COMMISSION ON STATE MANDATES**

The County of Los Angeles respectfully submits its comments on reasonable reimbursement methodologies as requested by the Commission on August 23, 2011.

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

Very truly yours,

A handwritten signature in black ink that reads "Wendy L. Watanabe".

Wendy L. Watanabe  
Auditor-Controller

WLW:JN:CY:lk

H:\SB90A RRM response due to CSM 12 20 11\RRM response 12 20 11 cover letter.doc

Enclosure

Los Angeles County's Comments  
On Reasonable Reimbursement Methodologies  
As Requested by the Commission on State Mandates

Executive Summary

This commentary is in response to the August 23, 2011 request of the Commission on State Mandates (Commission) to Los Angeles County (County) for guidance in reviewing a proposed 'reasonable reimbursement methodology' (RRM). In concept, an RRM is a tool that is designed to facilitate the development of standardized unit reimbursement rates for eligible claimants. However in practice, Commission staff note a number of implementation issues.

For example, Mr. Drew Bohan, Executive Director of the Commission cites the wide range of unit costs used to develop the County's *Municipal Stormwater* RRM. In particular, he indicates that the Commission adopted a \$6.74 RRM unit rate as a "constitutionally permissible" reimbursement rate even though one claimant had actual costs of \$14.46 and "... would be entitled to less than half of its actual costs". Mr. Bohan then asks:

"At some point is the range of figures used to develop the unit cost so wide that it violates the constitutional requirement that local agencies be reimbursed for their mandate-related costs?"

The County maintains that while RRM surveys may produce a wide range of responses, that is not, in and of itself, a basis for maintaining that the proposed RRM rate is constitutionally prohibited. Further analysis of variations in reported unit costs is required before that conclusion is available. Examples of these analyses from the County's *Municipal Stormwater* RRM are provided.

Mr. Bohan also questions how RRM proponents should satisfy the requirement that they "... consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner". Here, the County demonstrates that it has adhered to its definition of "cost-efficiency" in developing ICAN RRMs. The County contends that implementation of a mandate is cost-efficient if only reasonably necessary activities are performed and allowable costs incurred in the implementation of the mandate.

Finally, the County provides examples from its *Municipal Stormwater* program to illustrate that safeguards are in place to reduce the likelihood that the Commission will adopt inappropriate RRMs.

Municipal Stormwater RRM

Mr. Bohan indicates that the Commission found the County's *Municipal Stormwater* RRM of \$6.74 per transit trash receptacle to be reasonable even considering the wide range of RRM survey responses. Specifically, Mr. Bohan indicates that:

“The Commission recently found in the (Los Angeles County) *Municipal Stormwater* program that the RRM unit cost of \$6.74 was reasonable even though the unit costs used to develop that figure ranged from a low of \$2.02 to a high of \$14.46. The Commission implicitly found that \$6.74 was a constitutionally permissible figure even though one claimant whose figures were used to calculate the RRM figure had actual costs of \$14.46. Under the RRM, that claimant would be entitled to less than half of its actual costs.”

The County agrees that in the case of the RRM for the *Municipal Stormwater* program that \$6.74 was a constitutionally permissible reimbursement figure. Further, the RRM survey respondent, reporting \$14.46 of actual costs, accounted for only 39 out of the 7,219 or one half of one percent of the service units surveyed.<sup>1</sup>

It should also be noted that under the current version of the governing RRM statute (Government Code section 17518.5 as amended by Statutes of 2007, Chapter 329, Assembly Bill 1222), no longer includes the requirement found in the initial version of Section 17518.5 that:

“ ... For 50 percent or more of local agency and school district claimants, the amount reimbursed is estimated to fully offset their estimated costs to implement the manner in a cost-efficient manner.”

Now, a valid RRM may be one where some survey respondents receive less than half of their costs and also one where less than fifty percent of all survey respondents do not recover their full costs.

Accordingly, while RRM surveys initially produce a wide range of responses which may appear inequitable, that is not, in and of itself, a basis for maintaining that the proposed RRM rate is constitutionally prohibited. Further analysis of

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<sup>1</sup> See Exhibit 2, page 2 for the survey results for all *Municipal Stormwater* RRM survey respondents.

variations in reported unit values is required before that conclusion is available. In the case of the County's *Municipal Stormwater* RRM, further analysis included:

1. State agency review of specific RRM survey respondent's cost components.

For example, this occurred when the State Department of Finance reviewed the County's *Municipal Stormwater* RRM and found that trash receptacle cleaning costs increased more than average from one year to the next. The RRM proponent explained that the survey respondent began paying its contractors under living wage agreement requirements imposed by their jurisdiction the year in question. Of course the respondent had no choice but to comply and increased its contract labor payments appropriately. Therefore, the Commission accepted the cleaning cost increases.

2. Commission assessment of whether only reimbursable RRM activities were surveyed.

For example, On February 4, 2011, Commission staff issued their draft *Municipal Stormwater* RRM analysis and concluded that the County's RRM "... appears to be complete except for two essential pieces of data". The first type of missing data is whether the County included the costs of graffiti removal in its proposed RRM. The County analyzed the matter and found that it did not. Two sworn declarations to this effect are attached. The second type of missing data is the nature of "other" costs in the Bellflower City RRM survey response. It was found that these were not repetitive allowable costs. Accordingly, the per trash pickup RRM was recalculated and dropped from \$6.75 to \$6.74.

3. Interested party, eligible claimant and State Association critiques of the RRM survey.

For example, in the case of the *Municipal Stormwater* RRM survey, the respondent city with the reported cost of \$14.46 had an opportunity to complain that under the proposed \$6.74 RRM it would recover less than half its costs, but did not do so. In addition, the *Municipal Stormwater* RRM was reviewed and endorsed by the California Association of Counties and the League of Cities as providing the constitutionally required level of reimbursements to all eligible claimants.

## Conclusion

In conclusion, a wide range of figures used to develop the unit cost may not violate the constitutional requirement that local agencies be reimbursed for their mandate-related costs. Safeguards are in place to reduce the likelihood that the Commission will adopt inappropriate RRM.

### Interagency Child Abuse and Neglect (ICAN) RRMs

Mr. Bohan's also questions how RRM proponents are meeting the requirement (found in Government Section 17581.5(c)) that they "... consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner". Here, the County's response to this question cites examples from the County's RRM for the Interagency Child Abuse and Neglect (ICAN) program, currently under development. Mr. Bohan's specific questions are:

"Question 1: How should "cost-efficient" be defined?"

Question 2: What does this section require be cost-efficient? Stated another way, what does a requestor need to show to demonstrate that its proposed RRM unit cost meets the requirement of section 17581(c)?"

Regarding the definition of "cost-efficiency", a definition used in the development of the ICAN RRM is that implementation of a mandate is cost-efficient if only reasonably necessary activities are performed and allowable costs incurred in the implementation of the mandate.

Regarding proof that an RRM unit cost reflects the cost-efficient implementation of a mandate, the RRM proponent should report its examination of variations in costs among local agencies in implementing mandates in a cost-efficient manner as well as similarities in such costs.

The County submitted its proof that its ICAN RRMs reflect the cost-efficient implementation of the ICAN mandate to the Commission on January 21, 2010. The metrics chosen for these RRMs were standard times for performing specific components of the ICAN mandate.

RRMs simplify claiming, source documentation, and auditing of cost versus a cost reimbursement methodology that is very labor intensive that may include such documents as time studies, time sheets, and payroll records.

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 requirements<sup>2</sup>.

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] staff<sup>3</sup>.

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'<sup>4</sup> 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 mandated under ICAN from those that are mandated [and funded] under other programs.

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<sup>2</sup> 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.

<sup>3</sup> The declarations of two LASD staff, who were instrumental in developing the law enforcement ICAN time survey, were attached as Exhibit 1 [the Ferrell declaration] and as Exhibit 3 [the Scott declaration] to the County's January 21, 2010 filing with the Commission.

<sup>4</sup> These excerpts are from the "Los Angeles County Sheriff Department Child Abuse Protocol" was attached as Exhibit 4 and the "Investigation and Prosecution of Child Abuse Manual, published by the American Prosecutors Research Institute was attached as Exhibit 7 to the County's January 21, 2010 filing with the Commission.

### 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 of the County's January 21, 2010 filing with the Commission, "... 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 of the County's January 21, 2010 filing with the Commission, 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 agency<sup>5</sup>. 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 of the County's January 21, 2010 filing with the Commission, 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#)
Watch Commander reviews and approved closure of SCAR

<sup>5</sup> 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 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

Suzie Ferrell, with the Los Angeles County Sheriff Department's Field Operation Support Services, notes in her declaration, attached as Exhibit 1 of the County's January 21, 2010 filing with the Commission, 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 of the County's January 21, 2010 filing with the Commission, 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 of the County's January 21, 2010 filing with the Commission, 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 as Exhibit 8 of the County's January 21, 2010 filing with the Commission. 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, of the County’s January 21, 2010 filing with the Commission, 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 of the County’s January 21, 2010 filing with the Commission. 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 times<sup>6</sup> 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  
would provide a detailed itemization of the costs incurred in performing reasonably  
necessary activities, including labor, service and supply, equipment and contract  
costs.

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<sup>6</sup> See Exhibit 2 for the standard times of activities within each level.

## 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 of the County's January 21, 2010 filing with the Commission. 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 identified by Ms. Kimura, which are included in her e-mail on pages 13-14 of Exhibit 9 of the County’s January 21, 2010 filing with the Commission, 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.

### Conclusion

In conclusion, the County has adhered to its definition of “cost-efficiency” in developing ICAN RRM's. Namely, implementation of a mandate is cost-efficient if only reasonably necessary activities are performed and allowable costs incurred in the implementation of the mandate.

Proof that the ICAN RRM's reflect the cost-efficient implementation of the ICAN mandate is supported with substantial evidence, cited above.



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

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
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PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE  
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS  
JOHN NAIMO  
JAMES L. SCHNEIDERMAN  
JUDI E. THOMAS

**LOS ANGELES COUNTY'S COMMENTS  
ON REASONABLE REIMBURSEMENT METHODOLOGIES  
AS REQUESTED BY THE COMMISSION ON STATE MANDATES**

**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 comments on reasonable reimbursement methodologies (RRMs) as requested by Drew Bohan, Executive Director of the Commission on State Mandates (Commission) on August 23, 2011.

I declare that I have met and conferred with local officials, claimants and experts in preparing the attached comments regarding RRM's for the County's Municipal Stormwater -- Transit Trash parameters and guidelines (Ps&Gs) adopted by the Commission on March 24, 2011 as well as the County's Interagency Child Abuse and Neglect (ICAN) Investigation and Reports Ps&Gs as proposed on January 21, 2010.

I declare that it is my information and belief that RRM's used in the (above) Ps&Gs meet requirements specified in Government Code 17518.5.

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.

*12/15/11; Los Angeles, CA*

Date and Place

*Leonard Kaye*

Signature



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

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ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS  
JOHN NAIMO  
JUDI E. THOMAS

February 23, 2011

Mr. Drew Bohan  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Mr. Bohan:

**LOS ANGELES COUNTY'S REVIEW  
PROPOSED PARAMETERS AND GUIDELINES  
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES TEST CLAIMS**

The County of Los Angeles respectfully submits its review of parameters and guidelines for the Municipal Storm Water and Urban Runoff Discharges reimbursement program proposed by Commission staff.

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

Very truly yours,

Wendy L. Watanabe  
Auditor-Controller

WLW:MMO:JN:CY:lk  
H:\SB90A 02 11++ Storm water Ps&Gs Hearing/Cover letter 02 22 11

Enclosure

**Transit Trash Collection Unit [Per Pickup] Adjusted (2 10 11) Costs Survey Results (Note a)**  
**Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3**

Respondent Survey	Fiscal Years							(X) Average # Pickups (Note b)	(Y) @ year (Note c)	(X/Y=Z) Unit Cost @ Pickup #	M Weighted Ave. Adjustment (Note d)	M/Total=D % of Total Result	DxZ Result
	2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03						
1 Los Angeles County	\$893	\$1,241	\$1,152	\$1,122	\$1,127	\$1,132	\$1,111	156	\$7.12	2,513	34.81%	\$2.48	
Beverly Hills [in watershed]													
Norwalk [e]	\$347	\$321	\$320	\$290	\$272	\$381	\$602	52	\$7.51	1,497	20.74%	\$1.56	
2 Downey	\$311	\$299	\$708	\$144	\$144	\$144	\$144	134	\$2.02	1,434	19.86%	\$0.40	
3 Carson [2.57x52 wks=134]	\$526	\$522	\$528	\$530	\$504	\$486	\$430	52	\$9.69	1,323	18.33%	\$1.78	
4 Bellflower	\$1,504	\$1,504	\$1,504 [f]	\$1,271	\$1,361	\$1,224	\$1,180	104	\$14.46	39	0.54%	\$0.08	
5 Azusa	\$1,299	\$1,299	\$1,271					104	\$12.23	63	0.87%	\$0.11	
6 Artesia													
Commerce [in watershed]													
Covina [e]	\$398	\$384	\$374	\$374	\$374	\$353	\$343	52	\$7.14	350	4.85%	\$0.35	
7 Signal Hill													
<b>Average by Respondent</b>	\$754	\$796	\$837	\$622	\$630	\$653	\$540	\$775		7,219	100.00%	\$6.74	
<b>Average by Year</b>									<b>Totals</b>				

**Notes**  
 [a] This survey table presents data by fiscal year and by respondent. A weighted mean average per pickup cost of \$6.74 was found.  
 [b] Average annual unit cost per trash receptacle over the reimbursement period. Totals were divided by the number of nonzero years.  
 [c] During FY 02-03, trash receptacles were installed over a 3-month period. During the installation period, the cleaning and trash pick-up service was first handled in-house and later by contract. Because the number of trash receptacles was not a fixed number during this period and the maintenance service was handled in-house and by contract, it is difficult to accurately annualize the unit cost for FY 02-03.  
 [d] The number of units is the sum of all trash receptacles reported by respondents in each average annual cost year [above].  
 [e] Survey results were inconclusive. In Norwalk's case, contractor billed city for the combined costs of trash collection and bus stop cleaning. In Covina's case, contractor used numerous metrics to bill city, including per ton disposal costs-by-refuge type.  
 [f] \$6,517 was incurred during four months of 2006-07. Annualized cost was \$19,551 for 13 receptacles or 1,504 per receptacle.

**COMMISSION ON STATE MANDATES**

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March 12, 2013

Mr. Leonard Kaye  
 County of Los Angeles,  
 Auditor-Controller's Office  
 500 West Temple Street, Room 603  
 Los Angeles, CA 90012-2766

*And Affected State Agencies and Interested Parties (See Mailing List)*

**RE: Draft Staff Analysis and Proposed Parameters and Guidelines,  
 Schedule for Comments, and Notice of Hearing**  
*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*  
 Penal Code Sections 11165.9 et al.  
 County of Los Angeles, Claimant

Dear Mr. Kaye:

The draft staff analysis and proposed parameters and guidelines for the above-named matter are enclosed for your review and comment.

#### **Written Comments**

Any party or interested person may file written comments on the draft staff analysis and proposed parameters and guidelines by **April 2, 2013**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1), of the Commission's regulations.

#### **Hearing**

This matter is set for hearing on **April 19, 2013**, at 10:00 a.m. in the State Capitol, Sacramento, California. The final staff analysis will be issued on or about April 5, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2), of the Commission's regulations.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey  
 Executive Director

**DRAFT STAFF ANALYSIS**  
**AND**  
**PROPOSED PARAMETERS AND GUIDELINES**

Penal Code sections 11165.9, 11166, 11166.2, 11166.9,<sup>1</sup> 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9)

Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; and executive orders California Code of Regulations, title 11, section 903 (Register 98, Number 29), and “Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

*Interagency Child Abuse and Neglect Investigation Reports,*  
00-TC-22

County of Los Angeles, Claimant

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**EXECUTIVE SUMMARY**

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission’s regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission’s regulations.<sup>2</sup> Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.<sup>3</sup> Oral or written testimony is offered under oath or affirmation in article 7 hearings.<sup>4</sup>

**I. Summary of the Mandate**

These proposed parameters and guidelines pertain to the *Interagency Child Abuse and Neglect Investigation Reports* test claim (00-TC-22), adopted December 6, 2007. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 1999, or later for specified activities added by subsequent statutes. Some of the activities, as explained below, end as of January 1, 2012, due to a subsequent change in law.

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<sup>1</sup> Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

<sup>2</sup> California Code of Regulations, Title 2, section 1187.

<sup>3</sup> Government Code section 17559(b); California Code of Regulations, Title 2, 1187.5.

<sup>4</sup> *Ibid.*

The test claim addresses amendments to the Child Abuse and Neglect Reporting Act (CANRA). The act, as amended:

- Requires the reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children;
- Provides rules and procedures for local agencies receiving such reports;
- Requires cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys' offices;
- Requires reporting to the Department of Justice (DOJ) when a report of suspected child abuse was "not unfounded." An active investigation is required to determine whether the report is "not unfounded" before a report can be forwarded to the DOJ. As of January 1, 2012, the act no longer requires law enforcement agencies to report to the DOJ, and therefore no longer mandates law enforcement agencies to investigate whether the report is "not unfounded." Additionally, beginning January 1, 2012, only "substantiated" reports are required to be filed with DOJ by other agencies;
- Imposes additional cross-reporting and recordkeeping duties in the event of a child's death from abuse or neglect;
- Requires local agencies and the DOJ to keep records of investigations for a minimum of 10 years;
- Requires local agencies and DOJ to notify suspected child abusers that they have been listed in the Child Abuse Central Index;
- Imposes certain due process protections owed to persons listed in the index, and specifies certain other situations in which a person must be notified of his or her listing in the index.

The requirements imposed on individuals, termed "mandated reporters," are not unique to government, but rather are generally applicable to all persons described in the statute. Mandated reporters are required to report to "an agency specified in section 11165.9," whenever the mandated reporter knows or reasonably suspects that a child has been the victim of abuse or severe neglect. These requirements are imposed upon individuals by virtue of their vocation and professional training, irrespective of whether they are employed by local government. Therefore, as discussed in the test claim statement of decision, those requirements do not constitute a state-mandated new program or higher level of service.<sup>5</sup> Additionally, some duties found in the test claim statutes are not new, or are otherwise excluded from reimbursement, pursuant to the Commission's findings in the test claim statement of decision. Furthermore, maintaining the Child Abuse Central Index (CACI), and other duties imposed upon DOJ, are not reimbursable activities because they affect state government, rather than local government.

But the following corollary duties attendant upon city and county law enforcement agencies, county welfare departments, and county probation departments, as specified, *are* unique to local

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<sup>5</sup> See *County of Los Angeles v. State* (1987) 43 Cal.3d 46, at p. 56.

government, and were determined to constitute a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution:

- For agencies authorized to receive reports from mandated reporters of suspected child abuse to:
  - Refer those reports to the correct agency when the recipient agency lacks jurisdiction;
  - Cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices;
  - Report to licensing agencies;
  - Make additional reports in the case of a child's death from abuse or neglect;
  - Distribute the standardized forms to mandated reporters;
  - Investigate reports of suspected child abuse for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice;
  - 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;
  - Notify suspected abusers of listing in the Child Abuse Central Index; and
  - Retain records, as specified.

A small number of activities were also approved for county licensing agencies and district attorneys' offices, as provided.

## **II. Procedural History**

The Commission adopted the test claim statement of decision, approving partial reimbursement for the activities described above, on December 6, 2007, by a vote of 7 to 0.<sup>6</sup> The adopted statement of decision was issued December 19, 2007, with instructions for the claimant to file proposed parameters and guidelines within 30 days. The claimant submitted the first proposed parameters and guidelines on January 14, 2008. The claimant sought to develop a reasonable reimbursement methodology (RRM) to address some of the task-repetitive activities performed by law enforcement and county welfare agencies. After nearly two years of prehearings and extensions of time it was determined that the initial proposed parameters and guidelines did not describe the reimbursable activities consistently with the surveys that were being circulated to evaluate costs and form the proposed unit rate RRM's.<sup>7</sup> Rather than re-drafting the surveys and soliciting the results anew, the claimant submitted revised proposed parameters and guidelines, on January 28, 2010, attempting to describe the reimbursable activities more in line with the information requested in the surveys.

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<sup>6</sup> Exhibit A, Test Claim Statement of Decision, at pp. 1-2; 21-38.

<sup>7</sup> Exhibit X, Outcome of Prehearing and Tentative Hearing and Comment Schedules, Issued by Commission staff, November 12, 2009.

On March 18, 2010, the Department of Social Services (CDSS) submitted written comments on the revised proposed parameters and guidelines.<sup>8</sup> On March 30, 2010 the Department of Finance (DOF) submitted written comments on the revised proposed parameters and guidelines.<sup>9</sup> On April 1, 2010, the State Controller's Office (SCO) submitted written comments on the revised proposed parameters and guidelines.<sup>10</sup>

### **III. Position of the Parties**

#### **A. Claimant's Position and Proposed Parameters and Guidelines**

The claimant's proposed parameters and guidelines offer a combination of actual cost reimbursement for some activities and standard time RRM's for others. The proposed parameters and guidelines provide for actual cost reimbursement for the activities expressly approved in the statement of decision and activities alleged to be reasonably necessary to complete those activities, with two exceptions. Standard time RRM's are proposed for the following activities:

- For law enforcement to complete an investigation of suspected child abuse to determine whether a report is unfounded, substantiated or inconclusive. Multiple standard time RRM's are proposed by the claimant based upon the level of investigation required;<sup>11</sup> and
- For county welfare departments to complete certain reports and notice requirements.<sup>12</sup>

The standard times RRM's proposed for law enforcement purport to address the costs of investigative activities approved in the test claim statement of decision. These RRM's for investigative activities are proposed only for law enforcement agencies, and not for costs and activities of other agencies subject to the mandate. The standard times were developed on the basis of survey information collected from Los Angeles County Sheriff's Department personnel, and propose reimbursement for the full scope of investigative activities conducted by law enforcement agencies when inquiring into reports of suspected child abuse. Standard time RRM's are proposed for four levels of investigations, based on the seriousness of the underlying case of suspected child abuse, and the progress of the investigation, Level 1 being the lowest level. Claimant proposes that Level 5 investigations; which are the most complex, high profile, and expensive, be reimbursed through actual cost claiming.

In cases where the report is facially inaccurate, or where a preliminary investigation results in a finding that no abuse has occurred, standard times are proposed for the recordkeeping and investigative activities necessary to report to DOJ, or to decide not to report to DOJ; these cases are described as levels 1 and 2, and include receiving and reviewing the initial report, and tasking a patrol officer to conduct interviews and preliminary investigation, concluding with closure of the case. In cases where some evidence is adduced that necessitates further investigation, and that may ultimately result in an arrest and conviction, those activities are categorized as levels 3

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<sup>8</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines.

<sup>9</sup> Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines.

<sup>10</sup> Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines.

<sup>11</sup> See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, pp. 23-24.

<sup>12</sup> See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, p. 24.

and 4 investigations. Levels 3 and 4 include the collection of physical evidence, follow-up interviews, and making an arrest. Level 5 investigations are cases in which there is suspected child abuse that is high profile or high volume, such as in a religious institution, or child care facility, or a school. The claimants propose applying the standard times to each category of case, as reported by each eligible claimant, and multiplying the standard times by the hourly pay rates for each law enforcement agency.

The standard times RRM's proposed for county welfare agencies to prepare and submit certain reports and satisfy certain notice requirements were developed on the basis of information from CDSS detailing the procedures required of individual county welfare agencies, and surveys of eligible agencies in Los Angeles County, taken to determine how much time is spent on each activity. The standard times are proposed for the completion of the Child Abuse Summary Report form, the Suspected Child Abuse Report form, the Notice of Child Abuse Central Index Listing form, filing copies of the forms, and responding to Department of Justice requests. The standard times are proposed to be applied to the number of these activities completed, multiplied by the hourly pay rates for eligible county welfare departments. The proposed RRM's are silent regarding reimbursement for probation departments which are sometimes required to perform some of these activities.

### **B. Department of Social Services Position**

CDSS urges the Commission to reject the proposed parameters and guidelines, including the proposed law enforcement RRM, "because the activities described in it are not related to or required by CANRA." CDSS argues at length that CANRA does not give rise to any affirmative duty to investigate child abuse, and that in any event the investigative activities called for in the claimant's revised proposed parameters and guidelines reaches deep into the realm of criminal investigative activities. CDSS argues that local law enforcement has a responsibility to investigate suspected child abuse, but that responsibility is not grounded in the provisions of CANRA. CDSS's comments do not discuss the activities and the standard times proposed for county welfare departments, instead addressing only the activities and standard times proposed for law enforcement.<sup>13</sup>

### **C. Department of Finance Position**

DOF opposes the adoption of the claimant's revised proposed parameters and guidelines, on the ground that "the proposed RRM inappropriately includes the totality of its law enforcement response to reports of child abuse, and all activities leading up to a full criminal prosecution." DOF argues that "the activities in levels 3, 4, and 5 are not requirements of CANRA but a more extensive investigation needed for the criminal justice system to apprehend and prosecute a criminal and therefore should not be reimbursable." DOF urges instead that "only those activities directly related to an investigation conducted to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, should be reimbursable."<sup>14</sup>

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<sup>13</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 1.

<sup>14</sup> Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 1.

#### **D. State Controller's Office Position**

SCO offers comments and suggestions on the claimant's proposed parameters and guidelines, including, "the activities specified in Section IV B [Reimbursable Activities] do not clearly identify the mandated activities in the Statement of Decision adopted by the Commission on December 19, 2007." SCO requests that the activities to which standard times (i.e., the RRM) will apply should be correlated to the reimbursable activities specified in the statement of decision. SCO also suggests that the activities should be segregated between one-time and on-going activities. And, SCO recommends that only an RRM rate or actual cost methodology be applied to each activity, not "a combination of actual cost and or standard cost methodologies," as proposed in the claimant's revised proposed parameters and guidelines.<sup>15</sup>

### **IV. DISCUSSION**

#### **A. Period of Reimbursement**

Subsequent amendments to the test claim statutes have ended some activities for county law enforcement agencies and limited activities for all other county departments affected by this law. The period of reimbursement language for each activity reflects those changes.

#### **B. Reimbursable Activities**

The claimant has requested a number of reasonably necessary activities, including annually updating policies and procedures to implement the mandate; periodically, meeting with other agencies to coordinate cross-reporting; annually training "ICAN staff" in DOJ requirements; developing, updating, or obtaining computer software and equipment for cross-reporting; testing and evaluation costs to make an evidentiary finding; and due process costs. Staff finds that the Commission has frequently approved reimbursement for a one-time update of policies and procedures, but there is not substantial evidence in the record to support annual updates to policies and procedures. Staff also finds that a one-time development of due process procedures is reimbursable, based on intervening case law finding significant due process implications of an individual's listing in the Child Abuse Central Index, and no then-existing mechanism to remove an individual's name once erroneously listed. Staff finds that the remaining proposed reasonably necessary activities are not supported by evidence in the record.

Staff finds that distributing 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 was approved in the test claim statement of decision, and is approved in the parameters and guidelines without substantial analysis.

Staff finds that accepting reports of suspected child abuse from mandated reporters, and cross-reporting to other child protective agencies, county licensing agencies, and district attorneys' offices, were approved for reimbursement in the test claim statement of decision. These activities are approved in the parameters and guidelines without substantial analysis.

Staff finds that the Commission approved, in the test claim statement of decision, reimbursement for completing an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, for purposes of preparing and submitting the

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<sup>15</sup> Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at pp. 1-2.

state “Child Abuse Investigation Report” Form SS 8583, and forwarding to DOJ 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. The claimant has requested reimbursement for the full scope of investigative activities conducted by law enforcement agencies, but staff finds that the mandate only requires an investigation sufficient to determine whether a report is unfounded, substantiated, or inconclusive, and sufficient to prepare and submit the Form SS 8583. Furthermore, staff finds that the mandate to investigate impacts all agencies subject to the mandate equally, and law enforcement agencies should not be permitted to claim reimbursement for activities in excess of those mandated upon county welfare or county probation departments. Staff also finds that because employees of child protective agencies subject to the mandate to investigate and forward reports are also mandated reporters, and because a mandated reporter’s duties are not reimbursable under the test claim statement of decision, the agency may not claim reimbursement for investigative activities undertaken by its employees pursuant to their duty to make mandated reports and to complete the Form SS 8572. Where, in a particular case, the mandated reporter completing the Form SS 8572 is an employee of the agency investigating to determine whether to prepare and submit a Form SS 8583, reimbursement is not required if the investigation required to complete the Form SS 8572 pursuant to Penal Code section 11166(a) is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29). Finally, staff finds that the mandate to investigate, for law enforcement agencies only, is ended, as of January 1, 2012. For all other child protection agencies, only “substantiated” reports shall be forwarded to DOJ beginning January 1, 2012, and not “inconclusive,” or “unfounded” reports, pursuant to amendments to section 11169 effected by Statutes 2011, chapter 468 (AB 717).

Staff finds that the test claim statement of decision approved a number of notice requirements, including providing notice to a suspected abuser that he or she has been listed in the index, upon the occurrence of certain triggering events; providing notice to the mandated reporter of any action taken by the agency; and obtaining the original investigative report from the reporting agency, and 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, when a report is received from the Child Abuse Central Index. These notice requirements are approved for reimbursement with only clarifying analysis and alterations to the language of the approved activity.

Staff finds that the test claim statement of decision approved reimbursement for record retention requirements imposed by the test claim statutes. Those requirements are approved in the parameters and guidelines without substantial analysis, except as necessary to clarify that agencies had prior record retention requirements derived from other provisions of state law, and reimbursement is required only for the higher level of service required by the test claim statute.

Staff finds that the test claim statement of decision did not address the potential due process implications of an individual’s name being included in the Child Abuse Central Index, but that intervening case law has established that the index does implicate due process considerations. Therefore, the parameters and guidelines include reimbursement for the ongoing provision of due process protections to individuals seeking to challenge their listing in the CACI, including notice and a hearing.

Finally, staff addresses the completion of forms and recordkeeping requirements proposed for reimbursement by the claimant, and finds that the activities requested are either expressly approved elsewhere in the parameters and guidelines, or are reasonably necessary, or are not supported by evidence in the record.

### **C. Claim Preparation and Submission**

The claimant has proposed standard times RRM for the reimbursement of law enforcement agencies conducting investigative activities, and for the reimbursement of county welfare agencies preparing forms and filing copies of forms required by the test claim statutes. The standard times are developed on the basis of survey information collected from agencies charged with the reimbursable activities under the test claim statutes. Staff finds that development of an RRM does not require a particular type of information or basis, but that the substantial evidence standard must be satisfied, and the RRM must reasonably represent the costs incurred by claimants. Here, the claimant has not submitted sufficient admissible evidence upon which to make a finding approving the RRM.

### **V. Staff Recommendation**

Staff recommends that the Commission adopt the proposed statement of decision on the parameters and guidelines and the attached proposed parameters and guidelines. Staff further recommends that the Commission authorize staff to make non-substantive, technical corrections to the statement of decision and parameters and guidelines following the Commission hearing on this matter.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES:

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9,<sup>16</sup> 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9)

Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905, Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, title 11, section 903 (Register 98, No. 29)<sup>17</sup>, and “Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Period of reimbursement begins July 1, 1999, or later for specified activities added by subsequent statutes.

Case No.: 00-TC-22

*Interagency Child Abuse and Neglect Investigation Reports*

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted April 19, 2013)

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on April 19, 2013. [Witness list will be included in the final statement of decision.]

<sup>16</sup> Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

<sup>17</sup> The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

## **I. SUMMARY OF THE MANDATE**

These proposed parameters and guidelines pertain to the *Interagency Child Abuse and Neglect Investigation Reports* (ICAN) test claim (00-TC-22), adopted December 6, 2007. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 1999, or later for specified activities added by subsequent statutes. Some of the activities, as explained below, end as of January 1, 2012, due to a subsequent change in law.

The test claim addresses amendments to the Child Abuse and Neglect Reporting Act (CANRA). The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The Commission found that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, and 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903 as added by Register 98, No. 29, and “Child Abuse Investigation Report” Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

### ***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, § 11168, formerly § 11161.7.)<sup>18</sup>

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<sup>18</sup> As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958.

## ***Reporting Between Local Departments***

### **Accepting and Referring Initial Child Abuse Reports when a Department Lacks 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, § 11165.9.)<sup>19</sup>

### **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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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, § 11166, subd. (h), now subd. (j).)<sup>20</sup>
- 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, § 11166, subd. (h), now subd. (j).)<sup>21</sup>

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<sup>19</sup> As added by Statutes 2000, chapter 916, operative January 1, 2001.

<sup>20</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

<sup>21</sup> *Ibid.*

*A county welfare department shall:*

- Report by telephone immediately, or as soon as practically possible, 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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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, § 11166, subd. (h), now subd. (j).)<sup>22</sup>

- 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, § 11166, subd. (h), now subd. (j).)<sup>23</sup>

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 practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions 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 section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>24</sup>

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

- 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 was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>25</sup>
- 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, 2006, 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, § 11166, subd. (i), now subd. (k).)<sup>26</sup>

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 reported 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, § 11166, subs. (h) and (i), now subs. (j) and (k).)<sup>27</sup>

Reporting to Licensing Agencies:

*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:*

- 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 licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee 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

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<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

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 report and 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, § 11166.2.)<sup>28</sup>

**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, § 11166.9, subd. (k), now § 11174.34, subd. (k).)<sup>29</sup>

*A county welfare department shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)<sup>30</sup>
- 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, § 11166.9, subd. (l), now § 11174.34, subd. (l).)<sup>31</sup>
- 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, § 11166.9, subd. (l), now § 11174.34, subd. (l).)<sup>32</sup>

***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 neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the

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<sup>28</sup> As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

<sup>29</sup> As amended by Statutes 1999, chapter 1012, operative January 1, 2000. This code section has since been renumbered as Penal Code section 11174.34, without amendment, by Statutes 2004, chapter 842.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

state “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, “Child Abuse Investigation Report” Form SS 8583.)<sup>33</sup>

- 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, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, “Child Abuse Investigation Report” Form SS 8583.)<sup>34</sup>

***Notifications Following Reports to the Child Abuse Central 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, § 11169, subd. (b).)<sup>35</sup>
- 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, § 11170, subd. (b)(1).)<sup>36</sup>

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<sup>33</sup> Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Regulation as added by Register 98, No. 29.

<sup>34</sup> *Ibid.*

<sup>35</sup> As amended by Statutes 1997, chapter 842, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

<sup>36</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996,

- 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, § 11170, subd. (b)(2).)<sup>37</sup>
- 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 reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)<sup>38</sup>

*Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office 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, § 11170, subd. (b)(6)(A), now (b)(8)(A).)<sup>39</sup>

*Any city or county law enforcement agency, county probation department, or county welfare department shall:*

- 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, § 11170, subd. (c).)

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chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

<sup>37</sup> *Ibid.*

<sup>38</sup> As amended by Statutes 1997, chapter 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. This subdivision was renumbered by Statutes 2004, chapter 842.

<sup>39</sup> *Ibid.*

### ***Record Retention***

*Any city or county police or sheriff's department, or 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 eight years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 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, § 11169, subd. (c).)<sup>40</sup>

*A county welfare department shall:*

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 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, § 11169, subd. (c).)<sup>41</sup>

The Commission found that requirements imposed on individuals, termed “mandated reporters,” are not unique to government, but rather are generally applicable to all persons described in the statute. Mandated reporters, including physicians, teachers, social workers, law enforcement personnel, and members of a number of other professions, are required to report to “an agency specified in section 11165.9,” whenever the mandated reporter knows or reasonably suspects that a child has been the victim of abuse or severe neglect.<sup>42</sup> These requirements are imposed upon individuals by virtue of their vocation and professional training, irrespective of whether they are employed by local government. Therefore, as discussed in the test claim statement of decision, those requirements do not constitute a state-mandated new program or higher level of service.<sup>43</sup> Additionally, some duties found in the test claim statutes are not new, or are otherwise excluded from reimbursement, pursuant to the Commission’s findings in the test claim statement of

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<sup>40</sup> As amended by Statutes 1997, chapter 842.

<sup>41</sup> *Ibid.*

<sup>42</sup> Penal Code section 11166(a) (Added by Stats. 1980, ch. 1071. Amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, ch. 269; Stats. 1988, ch. 1580; Stats. 1990, ch. 1603 (SB2669); Stats. 1992, ch. 459 (SB1695); Stats. 1993, ch. 510 (SB665); Stats. 1996, ch. 1080 (AB295); Stats. 1996, ch. 1081 (AB3354); Stats. 2000, ch. 916 (AB1241); Stats. 2001, ch. 133 (AB102); Stats. 2002, ch. 936 (AB299); Stats. 2004, ch. 823 (AB20); Stats. 2004, ch. 842 (SB1313); Stats. 2005, ch. 42 (AB299); Stats. 2005, ch. 713 (AB776); Stats. 2006, ch. 701 (AB525); Stats. 2007, ch. 393 (AB673); Stats. 2010, ch. 123 (AB2380); Stats. 2012, ch. 728 (SB71); Stats. 2012, ch. 517 (AB1713); Stats. 2012, ch. 521 (AB1817)).

<sup>43</sup> See *County of Los Angeles v. State* (1987) 43 Cal.3d 46, at p. 56.

decision. Furthermore, maintaining the Child Abuse Central Index, and other duties imposed upon the Department of Justice, are not reimbursable activities because they affect state government, rather than local government.

But the corollary duties attendant upon city and county law enforcement agencies, county welfare departments, and county probation departments, where authorized, to receive reports from mandated reporters of suspected child abuse; to refer those reports to the correct agency when the recipient agency lacks jurisdiction; to cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices; to report to licensing agencies; to make additional reports in the case of a child's death from abuse or neglect; to distribute the standardized forms to mandated reporters; to investigate reports of suspected child abuse to determine whether to report to the Department of Justice; to notify suspected abusers of listing in the Child Abuse Central Index; and to retain records, as specified, *are* unique to local government, and were determined to constitute a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution. A small number of activities were also approved for county licensing agencies and district attorneys' offices, as provided.

## **II. PROCEDURAL HISTORY**

The underlying test claim was filed on June 29, 2001, alleging that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program upon local law enforcement, county welfare departments, and county probation departments. Medical professionals had been required to report suspected child abuse to law enforcement or child welfare authorities since 1963, but the law was expanded over time to include more professionals, and in 1980 the law was reenacted and amended as CANRA, and included new duties upon local government when receiving reports of suspected child abuse from mandated reporters.<sup>44</sup> The reenactment of the law, and subsequent amendments, were the subject of the test claim. The Commission partially approved the test claim on December 6, 2007, by a vote of 7 to 0.<sup>45</sup>

The adopted statement of decision was issued December 19, 2007, with instructions for the claimant to file proposed parameters and guidelines within 30 days. The claimant submitted the first proposed parameters and guidelines on January 14, 2008. On December 2, 2008, the claimant requested a prehearing conference on the draft parameters and guidelines.<sup>46</sup> Pursuant to the prehearing on December 11, 2008, the parties agreed that they would develop a reasonable reimbursement methodology (RRM) and submit the proposal to the Commission by April 1, 2009.<sup>47</sup> On March 10, 2009, the claimant submitted a request for a second prehearing.<sup>48</sup> Pursuant to the second prehearing, Commission staff issued proposed schedules for the parties resulting in a tentative hearing date between September 2009 and January 2010.<sup>49</sup> When the

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<sup>44</sup> Exhibit A, Test Claim Statement of Decision, at p. 2.

<sup>45</sup> Exhibit A, Test Claim Statement of Decision, at pp. 1-2; 21-38.

<sup>46</sup> Exhibit X, Request for Prehearing, December 2, 2008.

<sup>47</sup> Exhibit X, Confirmation of Tentative Hearing and Comment Schedule, December 19, 2008.

<sup>48</sup> Exhibit X, Request for Prehearing, March 10, 2009.

<sup>49</sup> Exhibit X, Tentative Hearing and Comment Schedules, April 3, 2009.

claimant failed to submit the proposed RRM parameters and guidelines within the proposed schedules, Commission staff warned, in a letter dated August 19, 2009, that “if a proposed reimbursement methodology is not submitted by September 1, 2009,” the Commission would proceed in adopting an actual cost parameters and guidelines at the December 2009 hearing.<sup>50</sup> The claimant requested a third prehearing, which was set for October 29, 2009.<sup>51</sup> Pursuant to the third prehearing, it was determined that the initial proposed parameters and guidelines did not describe the reimbursable activities consistently with the surveys that were being circulated to evaluate costs and form the proposed unit rate RRM parameters.<sup>52</sup> As a result, the claimant submitted revised proposed parameters and guidelines, on January 28, 2010, attempting to describe the reimbursable activities more in line with the information requested in the surveys.

On March 11, 2010, the Department of Social Services (CDSS) requested an extension of time to file comments on the revised proposed parameters and guidelines.<sup>53</sup> On March 12, 2010, the State Controller’s Office (SCO) requested an extension of time to file comments on the revised proposed parameters and guidelines.<sup>54</sup> On March 18, 2010, CDSS submitted written comments on the revised proposed parameters and guidelines.<sup>55</sup> On March 30, 2010 the Department of Finance (DOF) submitted written comments on the revised proposed parameters and guidelines.<sup>56</sup> On April 1, 2010, SCO submitted written comments on the revised proposed parameters and guidelines.<sup>57</sup>

### **III. POSITION OF THE PARTIES**

#### **A. Claimant’s Position and Proposed Parameters and Guidelines**

The claimant’s proposed parameters and guidelines offer a combination of actual cost reimbursement for some activities and standard times-based RRM parameters for others. The claimant proposes actual cost reimbursement for most activities expressly approved in the statement of decision, and most activities alleged to be reasonably necessary to complete those activities, except that standard time RRM parameters are proposed for the following activities:

- For law enforcement to complete an investigation of suspected child abuse to determine whether a report is unfounded, substantiated or inconclusive. Multiple

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<sup>50</sup> Exhibit X, Tentative Hearing Date, August 19, 2009.

<sup>51</sup> Exhibit X, Notice of Prehearing, October 19, 2009.

<sup>52</sup> Exhibit X, Outcome of Prehearing and Tentative Hearing and Comment Schedules, Issued by Commission staff, November 12, 2009.

<sup>53</sup> Exhibit X, Request for Extension to Respond to Los Angeles Revised Parameters and Guidelines, March 11, 2010.

<sup>54</sup> Exhibit X, Request for Extension, Revised Proposed Parameters and Guidelines, March 12, 2010.

<sup>55</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines.

<sup>56</sup> Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines.

<sup>57</sup> Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines.

standard time RRM's are proposed by the claimant based upon the level of investigation required;<sup>58</sup> and

- For county welfare departments to complete certain reports and comply with specified notice requirements.<sup>59</sup>

The activities proposed for reimbursement by the claimant, and the underlying the RRM's, are based on declarations in the record detailing the procedures that Los Angeles County Sheriff's Department employs to investigate reports of suspected child abuse. The standard times were developed on the basis of survey information collected from Los Angeles County Sheriff's Department personnel, and provide reimbursement for the full scope of investigative activities conducted by law enforcement agencies when inquiring into reports of suspected child abuse. Standard time RRM's are proposed for four levels of investigations, based on the seriousness of the underlying case of suspected child abuse, and the progress of the investigation, Level 1 being the lowest level. Claimant proposes that Level 5 investigations; which are the most complex, high profile, and expensive, be reimbursed through actual cost claiming.

In cases where the report is facially inaccurate, or where a preliminary investigation results in a finding that no abuse has occurred, standard times are proposed for the recordkeeping and investigative activities necessary to receive and track the report, and to decide not to forward the report to DOJ; these cases are described as levels 1 and 2, and include receiving and reviewing the initial report, and, where necessary, tasking a patrol officer to conduct interviews and preliminary investigation, concluding with closure of the case. Cases in which some evidence is adduced that necessitates further investigation, and in which an arrest and conviction may result, are categorized as levels 3 and 4 investigations. Levels 3 and 4 include the collection of physical evidence, follow-up interviews, and making an arrest. Level 5 investigations are cases in which there is suspected child abuse that is high profile or high volume, such as in a religious institution, or child care facility, or a school. The claimants propose applying one of the standard times to each category of case, as reported by each eligible claimant, and multiplying the standard times by the hourly pay rates for each law enforcement agency.

The standard times RRM's proposed for county welfare agencies to prepare and submit certain reports and satisfy certain notice requirements were developed on the basis of information from CDSS detailing the procedures required of individual county welfare agencies, and surveys of eligible agencies in Los Angeles County taken to determine how much time is spent on each activity. The standard times are proposed for the completion of the Child Abuse Summary Report form, the Suspected Child Abuse Report form, the Notice of Child Abuse Central Index Listing form, filing copies of the forms, and responding to Department of Justice requests. The standard times are proposed to be applied to the number of these activities completed, multiplied by the hourly pay rates for eligible county welfare departments. The proposed RRM's are silent regarding reimbursement for probation departments that may perform some of the activities proposed for the RRM's.

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<sup>58</sup> See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, pp. 23-24.

<sup>59</sup> See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, p. 24.

## **B. CDSS Position**

CDSS urges the Commission to reject the proposed parameters and guidelines, including the proposed law enforcement RRM, “because the activities described in it are not related to or required by CANRA.” CDSS argues at length that CANRA does not give rise to any affirmative duty to investigate child abuse, and that in any event the investigative activities called for in the claimant’s revised proposed parameters and guidelines reach deep into the realm of criminal investigative activities. CDSS argues that local law enforcement has a responsibility to investigate suspected child abuse, but that responsibility is not grounded in the provisions of CANRA. CDSS does not discuss the county welfare standard times, and the activities involved, in its comments, addressing only the activities and proposed standard times for law enforcement.<sup>60</sup>

## **C. DOF Position**

DOF opposes the adoption of the claimant’s revised proposed parameters and guidelines on the ground that “the proposed RRM inappropriately includes the totality of its law enforcement response to reports of child abuse, and all activities leading up to a full criminal prosecution.” DOF argues that “the activities in levels 3, 4, and 5 are not requirements of CANRA but a more extensive investigation needed for the criminal justice system to apprehend and prosecute a criminal and therefore should not be reimbursable.” DOF urges instead that “only those activities directly related to an investigation conducted to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, should be reimbursable.”<sup>61</sup>

## **D. SCO Position**

SCO offers comments and suggestions on the proposed parameters and guidelines, including, “the activities specified in Section IV B [Reimbursable Activities] do not clearly identify the mandated activities in the Statement of Decision adopted by the Commission on December 19, 2007.” SCO requests that the activities to which the standard time RRMs will apply be correlated to the reimbursable activities specified in the statement of decision. SCO also suggests that the activities should be segregated between one-time and on-going activities. And, SCO recommends that only an RRM rate or actual cost methodology be applied to each activity, not “a combination of actual cost and or standard cost methodologies,” as proposed in the claimant’s revised proposed parameters and guidelines.<sup>62</sup>

## **IV. COMMISSION FINDINGS**

Commission staff has reviewed the claimant’s proposed parameters and guidelines and comments received. Non-substantive, technical changes, for purposes of clarification, consistency, and conformity to the statement of decision and statutory language have been made, and are not addressed in this analysis. The following analysis addresses only substantive changes to the activities approved in the statement of decision, and to the claimant’s proposed

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<sup>60</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 1.

<sup>61</sup> Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 1.

<sup>62</sup> Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at pp. 1-2.

parameters and guidelines, and incorporates changes to the parameters and guidelines proposed by the parties, where appropriate. The analysis also addresses whether the evidence in the record supports the adoption of the proposed RRM's.

**A. Substantive Changes in Law Affecting the Period of Reimbursement for Some Activities (Section III. of Proposed Parameters and Guidelines)**

Government Code section 17557(e) 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 reimbursement for the 1999-2000 fiscal year. Therefore, costs incurred on or after July 1, 1999 are reimbursable under this test claim, for statutes in effect before July 1, 1999, or later, as specified, for statutes effective after July 1, 1999.

Here, the period of reimbursement must also take account of the subsequent amendments made to the test claim statutes that ended, or limited, some of the reimbursable activities. Statutes 2011, chapter 468 (AB 717) amended Penal Code section 11169 to provide, in pertinent part:

(a) 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 that is *determined to be substantiated*, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is *substantiated*, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report. 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. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) On and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 shall no longer forward to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect.

(c) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI). The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.<sup>63</sup>

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<sup>63</sup> Penal Code section 11169 (Stats. 2011, ch. 468 (AB 717)) [emphasis added].

Prior to the 2011 amendment, this section required agencies specified in section 11165.9<sup>64</sup> to forward to DOJ, after investigation, reports of suspected child abuse or neglect that were determined to be “not unfounded.”<sup>65</sup> By changing the requirement from those cases that were “not unfounded,” to only those that are “substantiated,” the amended section now excludes an “inconclusive” case, meaning that forwarding to DOJ “inconclusive” reports of suspected child abuse or neglect is no longer reimbursable as of the effective date of the amendment, January 1, 2012.<sup>66</sup>

The new section also provides that law enforcement agencies “shall no longer” forward reports of suspected child abuse to DOJ, even if those reports are substantiated. Therefore, for law enforcement agencies only, reimbursement for forwarding reports of suspected child abuse to DOJ is no longer mandated as of January 1, 2012. This change was intended, in part, to provide cost savings to the state by limiting the mandate, including ending reimbursement for all law enforcement investigations required to satisfy the reporting requirements.<sup>67</sup> However, AB 717 did not change any other statutory or common law requirements imposed upon police officers, as mandated reporters, to investigate child abuse pursuant to Penal Code section 11166. The Commission, in its statement of decision on the test claim, specifically found that section 11166 did not impose a reimbursable mandate on local government since the duty of a mandated reporter is not unique to government.<sup>68</sup> Therefore, beginning January 1, 2012, for law enforcement only, the activity of investigating child abuse, for purposes of preparing the report to DOJ, is no longer a reimbursable activity.

Note also that subdivision (c) requires that “At the time an agency specified in Section 11165.9 forwards a report [to DOJ]...the agency shall also notify in writing the known or

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<sup>64</sup> Penal Code section 11165.9 lists the agencies to which the remaining sections of the Child Abuse and Neglect Reporting Act apply: city and county police and sheriff’s departments, except school district police or security departments; county welfare departments; and county probation departments where designated by the county to receive reports of suspected child abuse from mandated reporters. (Stats. 2000, ch. 916).

<sup>65</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Code of Regulations, Title 11, section 903 (Register 98, No. 29); “Child Abuse Investigation Report” Form SS 8583.

<sup>66</sup> Penal Code section 11169 (As amended by Stats. 2011, ch. 468 (AB 717)).

<sup>67</sup> See Exhibit X, AB 717 Senate Committee Analysis [“By deleting the requirement to report inconclusive reports, as well as limiting CACI reporting agencies to child welfare and probation departments, the provisions of this bill will result in future state-reimbursable cost savings due to reduced mandated reporting workload on local reporting agencies”].

<sup>68</sup> See e.g. *Alejo v. City of Alhambra*, 75 Cal.App.4th 1180, addressing the duty of a law enforcement officer, as a mandated reporter, to investigate alleged child abuse reported to the officer; see also 11165.14, addressing the duty of law enforcement to 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 against a pupil at a schoolsite. However, these investigative requirements have not been found to impose reimbursable state-mandated programs.

suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI).” Because this notice requirement is triggered by the report forwarded to DOJ, and law enforcement agencies are no longer required to forward reports to DOJ pursuant to section 11169(b), law enforcement agencies are also no longer required to notify the suspected child abuser that he or she has been listed in CACI, at the time a report is forwarded. And, because only “substantiated” reports, rather than all reports that are “not unfounded” are now required to be forwarded to DOJ, the requirement for other agencies subject to the mandate to inform the suspected child abuser of the listing in the index will arise with diminished frequency. However, a number of other notice requirements approved in the test claim statement of decision remain unaffected by the amendments made by Statutes 2011, chapter 468. The remaining activities relating to notice requirements approved by the Commission arise from section 11170, and are not tied to or triggered by the initial forwarding of a report to DOJ. These activities are unaffected by the substantive amendments to the test claim statutes; the code section from which these activities arise was not substantively altered by Statutes 2011, chapter 468. Furthermore, these activities are triggered by events other than the initial listing in the CACI or initial forwarding of a report to DOJ, which were substantively altered by Statutes 2011, chapter 468. The remaining notice requirements are therefore included in the parameters and guidelines without further analysis.

Based on the foregoing analysis and discussion, the language of Section III, Period of Reimbursement, is altered to reflect the ending of certain activities, as of January 1, 2012. Additionally, for purposes of clarity, activities that are ended by subsequent amendments are specified in Section IV, Reimbursable Activities.

#### **B. Reimbursable Activities (Section IV. of Proposed Parameters and Guidelines)**

The majority of reimbursable activities included in the parameters and guidelines are drawn directly from the test claim statement of decision, and are approved without substantial analysis. However, for purposes of clarity and consistency, the parameters and guidelines provide, consistent with Penal Code section 11165.9, that “city and county law enforcement agencies” and “city or county police or sheriff’s departments” are used interchangeably throughout the test claim statutes, and this analysis, and are not distinct entities subject to the mandate, as might be inferred from the test claim statement of decision. Additionally, for purposes of clarity and consistency, activities relating to obtaining the original investigative report and drawing independent conclusions, and retaining records of suspected child abuse reports, will be analyzed briefly. And finally, the scope of the activities approved in the test claim statement of decision pertaining to investigations and forwarding reports to DOJ is analyzed at length.

#### **One-Time Activities: Developing Policies and Procedures to Implement the Mandate, Including Due Process Procedures**

The claimant has proposed the following:

- 1) *Annually, update Departmental policies and procedures necessary to comply with ICAN's requirements.*<sup>69</sup>

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<sup>69</sup> See Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, at p. 25.

- 2) *Periodically, meet and confer with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.*
- 3) *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.*
- 4) *Periodically, to develop, update or obtain computer software and obtain equipment necessary for ICAN cross-reporting and reporting to DOJ.*
- 5) *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.*
- 6) *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].*

SCO recommended, in its comments, that the proposed reasonably necessary activities “be delineated between One-time and Ongoing Activities.” SCO suggested that “Annually updating Departmental policies and procedures,” as proposed, should be only reimbursable as a one-time activity. SCO therefore recommended striking the word “annually” above, and instead approving one-time reimbursement to “[d]evelop and establish policies and procedures necessary to comply with ICAN’s requirements.”<sup>70</sup> DOF, similarly, suggested striking the word “annually” and approving only a one-time reimbursement to “[u]pdate Departmental policies and procedures to comply with ICAN requirements.”<sup>71</sup>

Government Code section 17557 provides that “[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.”<sup>72</sup> The Commission’s regulations provide that parameters and guidelines shall include “a description of the most reasonable methods of complying with the mandate.” “‘The most reasonable methods of complying with the mandate’ are those methods

<sup>70</sup> Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

<sup>71</sup> Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 2.

<sup>72</sup> Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).

not specified in statute or executive order that are necessary to carry out the mandated program.”<sup>73</sup>

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence.<sup>74</sup> The Commission’s regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,” and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice “in the manner and of such information as is described in Government Code section 11515.”<sup>75</sup> Therefore the reasonably necessary activities proposed must be supported by substantial evidence in order to withstand judicial review, and that evidence must include something other than hearsay evidence.

The claimant has submitted excerpts from the Los Angeles County Sheriff’s Department Child Abuse Protocol, suggesting that the department developed a written policy for child abuse investigations. The claimant has not submitted evidence directly explaining why policy updates are necessary, but it is reasonable to assume, in this limited context, that in implementing the test claim statutes some policies and procedures required updating. Accordingly, the Commission has frequently approved similar policy and procedure updates as a reasonably necessary activity.

However, there is no evidence that compliance with ICAN requirements necessitates *annual* updates to departmental policies and procedures. Since the enactment of the test claim statute in Statutes 2000, chapter 916, very few substantive changes have been made that pertain to the mandated activities approved in the test claim statement of decision, and the claimant has not made any showing that changes to the ICAN requirements are frequent enough or substantial enough to warrant *annual updates* to policies and procedures.<sup>76</sup>

Accordingly, the Commission finds that only a one-time update of policies and procedures for the ongoing activities approved by the Commission is reasonably necessary to carry out the mandate. Reimbursement for a one-time update of policies and procedures is reflected in the parameters and guidelines.

With respect to items 2) through 5), above, the claimant has not submitted sufficient evidence to establish that the proposed activities are reasonably necessary to comply with the mandate. While these activities might be logically explained, it is not the purview of the Commission to

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<sup>73</sup> Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

<sup>74</sup> Government Code section 17559(b) (Stats. 1984, ch. 1469, § 1; Stats. 1999, ch. 643 (AB 1679)).

<sup>75</sup> Code of Regulations, title 2, section 1187.5.

<sup>76</sup> See, e.g., Statutes 2011, chapter 468 (AB 717), amending Penal Code section 11169 to provide that only substantiated reports must be forwarded to the DOJ, and not “inconclusive” reports; and to provide that as of January 1, 2012, law enforcement agencies no longer are required to forward reports of suspected child abuse to DOJ.

approve activities that *may* be connected to the mandate; the Commission requires substantial evidence to approve these activities. Seeing none, items 2) through 5) are denied. The provision of due process, and related activities and costs, are examined more fully below, but the one-time activity of developing due process procedures is approved here.

The Commission finds that item 1), to develop policies and procedures to implement the mandate, and item 6) to develop policies and procedures to provide due process, are approved as follows:

*City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:*

- a. *Update Departmental policies and procedures necessary to comply with the reimbursable activities identified in IV B.*
- b. *Develop 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].*

## **Ongoing Activities**

### **1. Distributing the Suspected Child Abuse Report Form**

The Commission approved the following in the test claim statement of decision:<sup>77</sup>

*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, § 11168, formerly § 11161.7.)<sup>78</sup>*

This activity is sufficiently clear from the plain language of the test claim finding, and is therefore approved without further analysis.

### **2. Reporting Between Local Departments**

The Commission approved the following cross-reporting requirements in the test claim statement of decision:

*Accepting and Referring Initial Child Abuse Reports when a Department Lacks 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:*

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<sup>77</sup> Exhibit A, Test Claim Statement of Decision, at p. 41.

<sup>78</sup> As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958.

- *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, § 11165.9.)<sup>79</sup>*

*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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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, § 11166, subd. (h), now subd. (j).)<sup>80</sup>*
- *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, § 11166, subd. (h), now subd. (j).)<sup>81</sup>*

*A county welfare department shall:*

- *Report by telephone immediately, or as soon as practically possible, 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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a*

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<sup>79</sup> As added by Statutes 2000, chapter 916, operative January 1, 2001.

<sup>80</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

<sup>81</sup> *Ibid.*

*child which relates 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, § 11166, subd. (h), now subd. (j).)<sup>82</sup>*

- *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, § 11166, subd. (h), now subd. (j).)<sup>83</sup>*

*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 practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions 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 section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>84</sup>*
- *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*

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<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

*knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>85</sup>*

- *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, 2006, 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, § 11166, subd. (i), now subd. (k).)<sup>86</sup>*

*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 reported 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, § 11166, subs. (h) and (i), now subs. (j) and (k).)<sup>87</sup>*

*Reporting to Licensing Agencies:*

*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:*

- *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 licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee 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 report and any other pertinent materials.*

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<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

*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, § 11166.2.)<sup>88</sup>*

*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, § 11166.9, subd. (k), now § 11174.34, subd. (k).)<sup>89</sup>*

*A county welfare department shall:*

- *Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)<sup>90</sup>*
- *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, § 11166.9, subd. (l), now § 11174.34, subd. (l).)<sup>91</sup>*
- *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, § 11166.9, subd. (l), now § 11174.34, subd. (l).)<sup>92</sup>*

These activities are all sufficiently clear based on the language of the findings, and are therefore taken directly from the test claim statement of decision and included in the parameters and guidelines without substantial analysis.

### **3. Reporting to the State Department of Justice**

The most significant disputed issue in these parameters and guidelines is the proper scope of reimbursable activities relating to investigating reports of suspected child abuse and forwarding reports that have merit, as specified, to DOJ. The test claim statement of decision approved reimbursement for law enforcement agencies, county probation departments, or county welfare departments, to complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting Form SS 8583 to DOJ; and to forward a report in writing of every case the agency investigates that is not unfounded.

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<sup>88</sup> As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

<sup>89</sup> As amended by Statutes 1999, chapter 1012, operative January 1, 2000. This code section has since been renumbered as Penal Code section 11174.34, without amendment, by Statutes 2004, chapter 842.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

The claimant has requested reimbursement for *the full course of investigative activities* that law enforcement agencies undertake to satisfy, in the claimant's view, the reporting requirements of the test claim statute. The claimant has also proposed reimbursement for a number of reporting and recordkeeping requirements for county welfare departments, some of which are expressly approved elsewhere in this analysis, and some of which are not sufficiently explained or tied to approved activities in the test claim statement of decision.

The following analysis will demonstrate that reimbursement is not required for the full course of investigative activities performed by law enforcement agencies, but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ. The analysis will show that the mandate to report to DOJ applies equally to all agencies subject to the mandate, and that therefore law enforcement should not be reimbursed for activities that go beyond what is required for all child protective agencies. The analysis will also show that subsequent legislation has limited the mandate to exclude law enforcement's duty to report to DOJ regarding reports that are not unfounded, and thereby limits reimbursement for investigative activities for law enforcement agencies to the period prior to the amendment; and subsequent legislation has limited the mandate for all other agencies subject to the mandate to report to DOJ regarding only reports of child abuse that are substantiated.

- a. **The test claim statement of decision approved an investigation sufficient to determine whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, in order to prepare and submit the Child Abuse Investigation Report Form SS 8583, or subsequent designated form to the Department of Justice.**

The test claim statement of decision approved the following:

*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 neglect 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, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)<sup>93</sup>*
- *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*

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<sup>93</sup> Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Register 98, Number 29.

*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, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, “Child Abuse Investigation Report” Form SS 8583.)<sup>94</sup>*

**b. Penal Code section 11169(a), and Code of Regulations, title 11, section 903, as approved in the test claim statement of decision, require an agency receiving mandated reports to complete an investigation to determine whether a report or known or suspected child abuse must be forwarded to DOJ, and to obtain enough information to complete the report, as required by the regulations.**

The approved activities pertaining to investigation and forwarding reports arise primarily from Penal Code section 11169(a), which states the following:

A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. 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 and shall not retain the report. The report required by this section shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send that report to the Department of Justice.<sup>95</sup>

Code of Regulations, title 11, section 903, as approved in the test claim statement of decision, provided that:

All information items on the standard report form SS 8583 should be completed by the investigating [child protective agency]. Certain information items on the SS 8583 must be completed by the CPA in order for it to be considered a “retainable report” by DOJ and entered into [the index]. Reports without these items will be returned to the contributor. These information items are:

- (1) The complete name of the investigating agency and type of agency.
- (2) The agency’s report number or case name.
- (3) The action taken by the investigating agency.
- (4) The specific type of abuse.

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<sup>94</sup> *Ibid.*

<sup>95</sup> Penal Code section 11169 (Stats. 2000, ch. 916).

(5) The victim(s) name, birth date or approximate age, and gender.

(6) Either the suspect(s) name or the notation “unknown.”<sup>96</sup>

Other information on the form 8583, which “should be completed,” according to section 903, included the name of the investigating party, the date of the incident and the location, the address and relationship of suspect(s), and the present location of the victim, among other items.<sup>97</sup>

The Commission approved, in the test claim statement of decision, the completion of an investigation “to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive... for purposes of preparing and submitting the state “Child Abuse Investigation Report” Form SS 8583.” The Commission based its finding on Penal Code section 11169, Code of Regulations, title 11, section 903 (Register 98, No. 29), and Form SS 8583. The mandate does not require a full criminal investigation, or even determination of all the information items that *may* be included on a Form 8583. The mandate only requires enough information to determine whether to file a Form 8583, or subsequent designated form, and enough information to render the Form 8583 a “retainable report,” under the DOJ regulations.<sup>98</sup> Therefore, an investigation sufficient to satisfy the mandate includes only what is necessary to prepare and submit form 8583, consistent with the regulations, and to determine whether a report is unfounded, substantiated, or inconclusive.

**c. The claimant’s proposal provides reimbursement for activities in excess of the scope of the mandate.**

The claimant’s proposal focuses heavily on law enforcement, and provides reimbursement for five “levels,” or scenarios, in which suspected child abuse is reported to law enforcement, and in which varying degrees of investigation are conducted. Each of these five levels describes a series of steps in which law enforcement expends resources to investigate the report of suspected child abuse.

Level 1 describes a situation in which a report is received and reviewed, but is determined without further investigation to be unfounded, and the case is closed without reporting to DOJ. Level 2 describes a situation in which a report is received and reviewed, and a patrol officer is dispatched to investigate. The Level 2 scenario concludes with the patrol officer conducting interviews and determining that no child abuse has occurred. Levels 3 and 4 involve a situation in which the report has some initial signs of validity and necessitates more intensive investigation. Levels 3 and 4 therefore include the collection of evidence, booking that evidence, assigning detectives, and potentially making an arrest and turning over the case to the district attorney’s office for prosecution.<sup>99</sup> Level 5 is reserved for the unusual case of a high-profile or

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<sup>96</sup> Code of Regulations, title 11, section 903 (Register 98, No. 29). The regulations pled in the test claim have been subsequently amended, but the Commission does not here take jurisdiction of the amended regulations that were not pled in the test claim.

<sup>97</sup> Exhibit X, Form SS 8583 (Revised 3/91).

<sup>98</sup> Penal Code section 11169 (Stats. 2000, ch. 916); Code of Regulations, title 11, section 903 (Register 98, No. 29).

<sup>99</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, Narrative, at pp. 4-8.

high-volume case of child abuse, such as a day care center or religious organization, where the investigation does not neatly fit the pattern of levels 3 and 4. In each of the five levels, the initial report of suspected child abuse is received from the county welfare department.<sup>100</sup>

The claimant has submitted declarations from Suzie Ferrell and Daniel Scott, both of whom are employees of the Los Angeles County Sheriff's Department, and both of whom assert a belief that all activities described in the four levels are "reasonably necessary in conducting ICAN investigations, preparing ICAN reports and performing other required ICAN duties."<sup>101</sup> The Ferrell declaration states that Ms. Ferrell "developed the list of steps in performing ICAN duties under scenarios 1 and 2 [herself]," and "obtained the list of steps in performing ICAN duties under scenarios 3 and 4...from Sergeant Daniel Scott with the Los Angeles County Sheriff's Department, Family Crimes Bureau, Child Abuse Detail." Ms. Ferrell's declaration refers to Exhibit 2, containing the list of ICAN steps.<sup>102</sup> The Scott declaration introduces an excerpt from the Los Angeles County Sheriff's Department Child Abuse Protocol, which describes the procedures followed by the department in response to a report of suspected child abuse. The Scott declaration also states 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 DOJ forms.<sup>103</sup> Neither declarant provides any indication that he or she has considered whether the steps should be reimbursable; only that they are necessary to complete an investigation. Moreover, what is reasonably necessary to implement the mandate is a finding of law, and the declarations submitted by the claimant may inform that decision, but do not control.

DOF argues, in its comments, that the claimant's proposal "inappropriately includes the totality of its law enforcement response to reports of child abuse, and all activities leading up to a full criminal prosecution." DOF argues that "the activities in levels 3, 4, and 5 of the RRM extend beyond the limited investigation approved in the Statement of Decision (SOD) for the purpose of preparing and submitting Form SS 8583 to the Department of Justice (DOJ)."<sup>104</sup>

CDSS ignores the test claim statement of decision, and argues that no investigation is required under CANRA, except for the very narrow instance required under section 11165.14, not pled in this test claim.<sup>105</sup> However, CDSS also notes that its regulations require county welfare agencies to conduct in person interviews, and that "CDSS' investigatory requirements parallel the law

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<sup>100</sup> Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 2.

<sup>101</sup> Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Narrative, at p. 9;

<sup>102</sup> Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 1, Declaration of Suzie Ferrell, at p. 6.

<sup>103</sup> Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 3, Declaration of Daniel Scott, at pp. 1-2.

<sup>104</sup> Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 1. See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 2 [Level 5 is reserved for cases of child death or high profile/high volume child abuse, such as a day care center or religious institution, and there is no RRM proposed to address Level 5.].

<sup>105</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 1-3.

enforcement activities described in the [parameters and guidelines] only up to the point that the patrol officer completes his or her duties in the investigation.”<sup>106</sup> CDSS argues that county welfare agencies are required to make a determination whether to report to DOJ, pursuant to section 11169, on the basis of those initial in-person interviews. CDSS concludes: “[i]f 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.”<sup>107</sup>

Penal Code section 11164 states that the “intent and purpose of [CANRA] is to protect children from abuse and neglect.” The section recognizes that investigation is essential to the purpose (though it does not necessarily imply that all investigations will lead to criminal prosecution or penalties), saying: “[i]n any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.”<sup>108</sup> CDSS argues, accordingly, that the purpose of CANRA is the protection of children, not the investigation and prosecution of crime.<sup>109</sup> CDSS argues that the reporting required by CANRA does not involve identification of suspects,<sup>110</sup> does not require the same standards of proof as a criminal investigation or prosecution, and does not differentiate cases on the basis of severity.<sup>111</sup> The point is well-taken: if the goal of CANRA were to improve the prosecution of child abuse, the focus would not be reporting to DOJ, but conducting thorough investigations.

Moreover, if a significant focus of CANRA were the investigation of criminal instances of child abuse, the requirements of section 11169 would be crafted differently for law enforcement agencies as compared with county welfare departments, respective to their abilities and resources. But the requirements are not crafted differently for different agencies; the requirements to complete an investigation and to report to DOJ apply equally to all entities subject to the mandate. To the extent that a mandate to investigate can be tied to or derived from CANRA, it must be limited to the investigative activities that all agencies can and do undertake. Any further investigation should not be attributed to the mandate of CANRA.

The Manual of Policies and Procedures, an excerpt of which is submitted by the claimant as Exhibit 9, states that a social worker “shall have in-person contact with all children alleged to be abused,” and if the report is not unfounded, “shall interview all children present at time of the investigation, and all parents who have access,” and “shall make a determination as to whether

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<sup>106</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 11.

<sup>107</sup> Exhibit C, CDSS Comments on Claimant’s Revised Proposed Parameters and Guidelines, at p. 11.

<sup>108</sup> Penal Code section 11164 (Stats. 2000, ch. 916 (AB 1241)).

<sup>109</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 1-2.

<sup>110</sup> Section 903 of title 11, Code of Regulations, states that all information on the form 8583, “should be completed.” However, the same section also states that a “retainable report” entered into the index may include “[e]ither the suspect(s) name or the notation ‘unknown.’” (Code of Regs., tit. 11, § 903 (Reg. 98, No. 29)).

<sup>111</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 8.

services are appropriate,” and “shall request assistance from law enforcement if necessary.” The Manual goes on to state that the county “shall submit a report pursuant to PC Section 11169 to the Department of Justice of every case it investigates...that it has determined not to be unfounded.”<sup>112</sup> CDSS does not assert that all activities required in the Manual of Policies and Procedures are required by CANRA; in fact most are required by the Welfare and Institutions Code.<sup>113</sup> Nevertheless, as CDSS points out, “[e]very 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 [or] instance in which the Department of Justice rejected a county welfare department CACI referral based on the sufficiency of the social worker’s investigation.” CDSS argues that the maximum level of investigation that county welfare departments are required to undertake is to conduct interviews with parents, suspects, victims, and witnesses, and that “[b]ased 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.”<sup>114</sup> CDSS concludes that the interviews with suspect(s), victim(s) and witness(es) conducted by county welfare departments are sufficient to comply with the mandate, and that law enforcement activities are reimbursable only to the same extent.<sup>115</sup>

As discussed above, the test claim statutes require that all agencies subject to the mandate forward all reports that are “not unfounded,” and the duty to investigate under section 11169 arises from the requirement to forward reports and to make that determination.<sup>116</sup> The point at which the decision is made to close the case (an unfounded report) or continue the investigation (an inconclusive or substantiated report) is the point at which a determination sufficient to control whether a report will be forwarded to DOJ has been made. The claimant’s evidence demonstrates that an investigation that results in a finding of no child abuse will conclude with the patrol officer’s interviews.<sup>117</sup> CDSS argues that in-person interviews are sufficient to support a decision whether to forward the report to DOJ for county welfare departments.<sup>118</sup> In the law

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<sup>112</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, at Exhibit 9.

<sup>113</sup> Exhibit X, CDSS MPP 31-101 et seq. referencing Welfare and Institutions Code section 16501(f) as the source of the requirement to investigate. See also Exhibit \_\_, Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines p. 15 stating the following: “The investigative activities performed by county social workers under CDSS’s regulations are exclusively and totally connected with duties established under the Welfare and Institutions Code, not CANRA. Accordingly, costs for those activities are not related to the claim in the matter.”

<sup>114</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 10-11

<sup>115</sup> *Id.*, at p. 11.

<sup>116</sup> As noted previously, the current text of section 11169 requires reporting to DOJ only of “substantiated” reports, rather than those that are “not unfounded,” but the effective date of this change is the same as the date after which law enforcement agencies no longer must report to DOJ in any event, and therefore the change is irrelevant to the discussion in this section.

<sup>117</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, at p. 5.

<sup>118</sup> Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 10-11.

enforcement context, however, the claimant seeks reimbursement for the next steps in the investigation, including the collection of evidence, and the referral to a detective for further investigation.<sup>119</sup> In the event those steps are taken, the matter is clearly “not unfounded,” and will result in a report to DOJ. Therefore, because in-person interviews are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that county welfare departments take before determining whether to forward the report to DOJ and possibly refer the matter to law enforcement, those same interviews must be the last step that is necessary to comply with the mandate. All further investigative activities are not reimbursable under the mandate, because, in a very practical sense, once evidence is being gathered for criminal prosecution, the determination that a report is “not unfounded” has been made, and the investigative mandate approved in the test claim statement of decision has been satisfied.<sup>120</sup>

Based on the foregoing, the Commission finds that the activities proposed for reimbursement to law enforcement agencies exceed the activities approved in the test claim statement of decision, as specified.

**d. The requirement to investigate arises from both sections 11166 and 11169, but only investigative activities required pursuant to section 11169 are reimbursable.**

The Commission’s approval of investigative activities cites Penal Code section 11169 and *Alejo v. City of Alhambra*. *Alejo*, in turn, relied on both sections 11166(a) and 11169 for its finding that police are required to investigate reports of suspected child abuse. Ultimately, the Commission found, in the test claim statement of decision, that the activities of mandated reporters, required under section 11166(a), were not reimbursable because they were not unique to government.<sup>121</sup>

*Alejo* involved a child being abused by his mother’s live-in boyfriend. The child’s father reported the abuse to police, but they failed to investigate, or cross-report, or create any internal report. The child was soon after severely beaten and left permanently disabled, and the police department and the officer who took the report were sued on a negligence per se theory. The court explained that a negligence per se action will lie where (1) there has been a violation of statute or regulation; (2) the harm to the plaintiff was caused by the violation of statute or regulation; (3) the harm is of the type intended to be prevented by the statute or regulation; and (4) the plaintiff is within the class of persons that were to be protected by the statute or regulation. The court held that the only elements in issue were the causation question, and whether the failure to investigate upon receipt of a report of child abuse from the father was a violation of the statute.<sup>122</sup>

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<sup>119</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, at pp. 5-9.

<sup>120</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, Exhibit 2, at pp. 2-6.

<sup>121</sup> Exhibit A, Test Claim Statement of Decision, at p. 31; *Alejo v. City of Alhambra*, (Cal. Ct. App. 2d Dist. 1999) 75 Cal.App.4th 1180.

<sup>122</sup> *Alejo, supra*, at pp. 1184-1185.

Relying on *Williams v. State of California* (1983) 34 Cal.3d 18, the court found that, as a general rule, police do not have a duty to act, including a duty to investigate. In *Williams*, the California Supreme Court concluded:

In spite of the fact that our tax dollars support police functions, it is settled that the rules concerning the duty - or lack thereof - to come to the aid of another are applicable to law enforcement personnel in carrying out routine traffic investigations. Thus, the state highway patrol has the right, but not the duty, to investigate accidents.<sup>123</sup>

The California Supreme Court also observed that “the intended beneficiaries of any investigation that is undertaken are the People as prosecutors in criminal cases, not private plaintiffs in personal injury actions.”<sup>124</sup> Accordingly, the *Alejo* court concluded that “[t]herefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection.”<sup>125</sup>

However, the court found a departure from the general rule: “[s]ection 11166, subdivision (a) creates such a duty.”<sup>126</sup> Section 11166, as it read in 1999, provided, in pertinent part:

(a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible... For the purposes of this article, “reasonable suspicion” means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.<sup>127</sup>

The *Alejo* court concluded that although nothing in the plain language of section 11166 requires a mandated reporter to investigate child abuse:

[I]t clearly envisions some investigation in order for an officer to determine whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the county welfare department and the district attorney under section 11166, subdivision (i) and to the Department of Justice under section 11169, subdivision (a). The latter statute provides in relevant part: “A child protective agency shall forward to the Department of Justice a report in

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<sup>123</sup> *Williams, supra*, 34 Cal.3d at p. 24.

<sup>124</sup> *Williams, supra*, 34 Cal.3d at p. 24, Fn 4.

<sup>125</sup> *Alejo, supra*, 75 Cal.App.4<sup>th</sup> at pp. 1186.

<sup>126</sup> *Alejo, supra*, 75 Cal.App.4<sup>th</sup> at pp. 1186.

<sup>127</sup> Penal Code section 11166 (Stats. 1996, ch. 1081 (AB 3354) [current version employs the term “mandated reporter,” which is in turn defined in section 11165.7]).

writing of *every case it investigates* of known or suspected child abuse which is determined not to be unfounded .... A child protective agency *shall not forward* a report to the Department of Justice *unless it has conducted an active investigation* and determined that the report is not unfounded, as defined in Section 11165.12.”<sup>128</sup>

Furthermore, the *Alejo* court held that the statute imposed a duty “to take further action when an objectively reasonable person in the same situation would suspect child abuse,” including reporting to a child protective agency immediately or as soon as practically possible. And finally, the *Alejo* court concluded that “[c]ontrary to the city's position, the duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse. The language of the statute, prior cases and public policy all support this conclusion.”<sup>129</sup>

In the test claim statement of decision here, the Commission noted that “the court [in *Alejo*] was not examining the law from a mandates perspective, and made the finding based on current law.” Therefore the Commission was compelled to examine prior law, and consider the court’s decision in the context of mandates law to determine whether new programs or higher levels of service were mandated by the test claim statutes. With respect to prior law, the Commission noted that former Penal Code section 11161.5 required that: “[c]opies of all written reports received by the local police authority shall be forwarded to the Department of Justice.”<sup>130</sup> The Commission found that the prior law did not require investigation, but required police only “to forward a copy of the report to the state, as received.”<sup>131</sup> The Commission concluded:

No earlier statutes required any determination of the validity of a report of child abuse or neglect before completing a child abuse investigative report form and forwarding it to the state. Therefore, the Commission finds that an investigation *sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive*, as defined by Penal Code section 11165.12, is newly mandated by Penal Code section 11169, subdivision (a), as described by the court in *Alejo*.<sup>132</sup>

With respect to other mandates law considerations, the Commission held that because section 11166(a), which governs the duties of a mandated reporter, applies to a number of different professions, public and private, the requirements imposed are not unique to government, and therefore cannot be reimbursable.<sup>133</sup> Accordingly, the Commission found that “Penal Code

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<sup>128</sup> *Alejo v. City of Alhambra*, *supra*, 75 Cal.App.4th 1180, at page 1186. [Emphasis added.]

<sup>129</sup> *Alejo*, *supra*, 75 Cal.App.4th at pp. 1186-1187.

<sup>130</sup> Former Penal Code section 11161.5 (Stats. 1973, ch. 1151).

<sup>131</sup> Exhibit A, Test Claim Statement of Decision, at pp. 29-30.

<sup>132</sup> Exhibit A, Test Claim Statement of Decision, at p. 31 [emphasis added]. See also *Alejo v. City of Alhambra*, *supra*, 75 Cal.App.4th 1180, 1186.

<sup>133</sup> See *County of Los Angeles v. State of California* (1987) 43 Cal.3d.46, at p. 56 [Reimbursement required only for “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique

section 11166, subdivision (a), does not mandate a new program or higher level of service on local governments for the activities required of mandated reporters.”<sup>134</sup> Therefore, even though the court in *Alejo* found that section 11166(a) imposed a duty to investigate on the police officer as a mandated reporter, reimbursement is not required for costs arising from that duty; section 11166(a) was therefore denied. Thus the test claim statement of decision approved reimbursement for the investigation of suspected child abuse, and for forwarding reports that are “not unfounded” to the DOJ, as specified, relying only on section 11169, as interpreted by the court in *Alejo*.<sup>135</sup>

- e. **Only investigative activities conducted by the agency subsequent to the receipt of a mandated report are reimbursable; reimbursement is not required for investigative activities conducted by employees of a county child protective agency pursuant to the duties of a mandated reporter.**

Because section 11166(a) was held by the *Alejo* court to impose a duty upon individuals employed by a local child protective agency to investigate, but is not reimbursable, the parameters and guidelines must be crafted to avoid over-claiming when the mandated reporter in a particular case is also an employee of the child protective agency that will complete the investigation under section 11169.

Under section 11165.9, reports “shall be made by mandated reporters to any police department, sheriff’s department, county probation department if designated by the county to receive mandated reports, or the county welfare department.” And under section 11165.7, mandated reporters include “[a]ny employee of any police department, county sheriff’s department, county probation department, or county welfare department.”<sup>136</sup> Thus an employee of any of those agencies, represented here by the claimant, Los Angeles County, could be both a mandated reporter, and a recipient of mandated reports. In that event a mandated reporter could be required both to complete the initial report of suspected child abuse, and to investigate that report in order to determine whether to forward the matter to DOJ. In this manner the requirements of section 11166(a) and 11169 might be completed by the same agency, or even the same employee, and because the former requirements under section 11166(a) are not reimbursable, a claimant must not be permitted to claim reimbursement for investigative activities conducted pursuant to section 11166(a). In that event, reimbursement is required for investigative activities necessary to complete the agency’s duties under section 11169, but not for any investigation already completed by the mandated reporter under section 11166(a).

As discussed above, a mandated reporter’s duty to investigate under section 11166(a) pursuant to the holding in *Alejo* is not reimbursable. The precise scope of this investigative duty is not specified, but all mandated reporters are expected to employ the Form SS 8572 to report suspected child abuse to one of the identified child protective agencies. This duty is triggered

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requirements on local governments and do not apply generally to all residents and entities in the state.”]

<sup>134</sup> Exhibit A, Test Claim Statement of Decision, at p. 16.

<sup>135</sup> *Ibid.*

<sup>136</sup> Penal Code section 11165.7 (As amended by Stats. 2000, ch. 916

whenever the mandated reporter, *in his or her professional capacity or within the scope of his or her employment*, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.<sup>137</sup> Given that the scope of employment within a law enforcement agency, county probation department, or county welfare agency generally includes investigation and observation for crime prevention, law enforcement and child protection purposes, information may be obtained by an employee which triggers the requirements of section 11166(a), and ultimately leads to an investigation and report to DOJ under section 11169(a). Ultimately, some of the same information necessary to satisfy the reporting requirements of section 11169 and the DOJ regulations may be obtained in the course of completing a mandated reporter's (non-reimbursable) duties under section 11166(a) (as discussed above, section 11169 requires a determination whether a report is unfounded, inconclusive, or substantiated, and Code of Regulations, title 11, section 903, as amended by Register 98, No. 29, requires certain information items in order to complete a "retainable report").

The more recent amendments to the regulatory sections pled in the test claim provide that an agency must complete all information required in Form SS 8583.<sup>138</sup> But those amended regulations are not the subject of this test claim; the test claim statement of decision approved only Code of Regulations, title 11, section 903 *as amended by Register 98, No. 29*, which adopted the Form SS 8583, and required that only "certain information items...must be completed." Those information items, as discussed above, impose a very low standard of investigation for reporting to DOJ regarding instances of known or suspected child abuse. Because, as discussed above, a mandated reporter is expected to do what is reasonable within the scope of his or her experience and employment, a mandated reporter who is an employee of a child protective agency necessarily has a greater responsibility to investigate when he or she has reasonable suspicion of child abuse.<sup>139</sup> Therefore the regulations and statutes approved in the test claim statement of decision impose very little beyond what would otherwise be expected of a mandated reporter in the employ of a child protective agency, and therefore reimbursement must be limited to only such investigative activity as is necessary to satisfy the mandate of section 11169, but not mandated on the individual employee under section 11166.

Therefore, any investigation conducted by an employee of a county law enforcement agency, county welfare department, or county probation department, *prior to the completion of a Form SS 8572 under section 11166(a)*, is not reimbursable under this mandated program. And, if the Form SS 8572 is *completed by an employee of the same agency*, and the information contained in

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<sup>137</sup> Penal Code section 11166(a) (Stats. 2000, ch. 916).

<sup>138</sup> Section 902 of title 11, Code of Regulations, provides that "[i]n order to fully meet its obligations under CANRA, an agency required to report instances of known or suspected child abuse or severe neglect must complete all of the information on the BCIA 8583. Only information from a fully completed BCIA 8583 will be entered into the CACI."

<sup>139</sup> See Alejo, *supra*, 75 Cal.App.4<sup>th</sup>, at p. 1187 ["duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse"].

the Form SS 8572 is *sufficient to make the determination and complete the essential information items required by section 11169 and the regulations*, no further investigation is reimbursable.<sup>140</sup>

Thus, the parameters and guidelines authorize reimbursement for investigation only to the extent information has not been previously obtained by a mandated reporter within the same agency, in the course of the investigation already performed by the mandated reporter within the scope of his or her employment, to determine if a report of child abuse is not unfounded.<sup>141</sup> If the mandated reporter in a particular case is not an employee of the investigating agency, the agency maintains an independent and reimbursable duty to investigate in order to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive for purposes of preparing and submitting the state “Child Abuse Investigation Report” Form SS 8583. If necessary, the investigating agency may need to verify the information reported on the Form SS 8572. But where the mandated reporter is an employee of the investigating agency, investigative activities necessary to complete Form 8583 to submit to DOJ, and not any investigation which was required to complete Form 8572, are reimbursable; and where the investigation undertaken to complete Form SS 8572 is sufficient also to complete Form SS 8583, and to satisfy the mandate of section 11169 to determine whether the report must be made to DOJ, reimbursement is not required for any further investigation.

**f. The mandate to report to DOJ regarding suspected child abuse has been limited by subsequent legislation, as provided.**

As stated above in analyzing the period of reimbursement, section 11169 was amended by the Legislature in 2011, ending the mandate for law enforcement agencies to investigate and forward to DOJ, and limiting the requirement for all other local agencies to forwarding only those reports that are substantiated. Penal Code section 11169 was amended in 2011 to provide that “[o]n and after January 1, 2012, a police department or sheriff’s department specified in Section 11165.9 *shall no longer forward to the Department of Justice* a report in writing of any case it investigates of known or suspected child abuse or severe neglect.”<sup>142</sup> Therefore, both the requirement to “[f]orward to the Department of Justice a report in writing of every case it investigates,” as well as the requirement to “[c]omplete an investigation...for purposes of

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<sup>140</sup> This position is supported by the description submitted by the claimant of the investigative activities conducted by law enforcement: each of the four levels of investigation, as discussed above, begins with receiving a “SCAR [Suspected Child Abuse Report, Form 8572] *from Department of Children and Family Services.*” There is no mention of reimbursement for the situation in which the mandated reporter is an officer in the same law enforcement agency. The claimant’s requested reimbursable activities appear to assume, correctly, that any investigative activities prior to the completion of a Form 8572 will not be reimbursed; only investigative activities subsequent to the receipt of a Form 8572 are proposed for reimbursement. (Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, at pp. 4-7; 23-24).

<sup>141</sup> “Unfounded reports” are defined as reports that are determined false, to be inherently improbable, to involve accidental injury, or not to constitute child abuse or neglect as defined by Penal Code section 11165.12.

<sup>142</sup> Penal Code section 11169(b) (Amended by Stats. 2011, ch. 468, § 2 (AB 717)).

preparing and submitting the state ‘Child Abuse Investigation Report’ Form SS 8583,”<sup>143</sup> are ended, *for purposes of reimbursement to law enforcement agencies*, as of January 1, 2012. Penal Code section 11169 also was amended at the same time to provide that only “substantiated” reports of suspected child abuse shall be forwarded to the DOJ by agencies other than law enforcement, rather than reports that are “not unfounded,” as was the requirement under prior law.<sup>144</sup> This results in fewer reports being forwarded to DOJ by the agencies remaining subject to the mandate.

Therefore, because the statute at issue has been amended to end the requirement as applied to law enforcement, the activities approved by the Commission in the test claim statute must also end, as applied to law enforcement, and the requirement to forward reports to DOJ must be limited, as applied to all other entities subject to the mandate, as of January 1, 2012. Section IV of the parameters and guidelines reflects these dates.

**g. Reimbursement for activities required to report to DOJ is approved for all agencies subject to the mandate, but for law enforcement only until December 31, 2011, and for forwarding inconclusive reports only until December 31, 2011.**

The test claim statement of decision approved reimbursement for investigation of reports of suspected child abuse, but only to the extent of an investigation sufficient to determine whether a report of suspected child abuse or neglect must be forwarded to DOJ. The test claim statement of decision also approved reimbursement for reporting to DOJ all reported instances of known or suspected child abuse that are determined, after investigation, to be “not unfounded.” Based on the foregoing analysis, an investigation sufficient to make that determination is complete after a law enforcement officer, or county welfare employee, or county probation department employee where applicable, has completed in-person interviews with the parents, suspects, victims, and witnesses, if any. And, because the mandate to investigate applies equally to all agencies subject to the reporting requirements, reimbursement must be limited to the activities that are or can be performed by all agencies subject to the mandate, and must exclude the collection of physical or forensic evidence, and the building of a criminal case. Moreover, because the activities of mandated reporters under section 11166(a) are not reimbursable, any investigative activity to be reimbursed under section 11169 must exclude investigative activities conducted by a mandated reporter prior to submission of a Form SS 8572, even if the mandated reporter is an employee of an otherwise-reimbursable county agency. And finally, the investigative activities of law enforcement agencies are no longer mandated under the test claim statutes as of January 1, 2012, pursuant to amendments made to the underlying code sections, as discussed above.

Pursuant to the above analysis, the following activities are approved for reimbursement in the parameters and guidelines:

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<sup>143</sup> Exhibit A, Test Claim Statement of Decision, at p. 45.

<sup>144</sup> Penal Code section 11169(a) (Amended by Stats. 2011, ch. 468, § 2 (AB 717)). Compare Penal Code section 11169 (As amended by Stats. 2000, ch. 916 (AB 1241)).

## ***Reporting to the State Department of Justice***

a. ***From July 1, 1999 to December 31, 2011, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall.***<sup>145</sup>

1) ***Complete an investigation***

*Complete an investigation to determine whether a report of suspected child abuse or severe neglect 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.*<sup>146</sup>

*Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), and dispatching an employee to conduct initial interviews with parents, victims, suspects, or witnesses, where applicable.*

*Reimbursement is not required for any investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a); in the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).*

*Reimbursement is not required for investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a detective, the conducting of follow-up interviews, and the potential making of an arrest.*

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<sup>145</sup> Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ for law enforcement agencies ends on January 1, 2012. In addition, the duty for all of the affected agencies is modified to exclude an "inconclusive" report.

<sup>146</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

2) Forward reports to the Department of Justice

*Prepare and submit 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 (currently form 8583) and may be sent by fax or electronic transmission.<sup>147</sup>*

*This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated or inconclusive to a finding of unfounded or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI. Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.*

- b. **Beginning January 1, 2012**, county welfare departments, or county probation departments where designated by the county to receive mandated reports shall:

1) Complete an investigation

*Complete an investigation to determine whether a report of suspected child abuse or severe neglect 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.<sup>148</sup>*

*Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), and dispatching an employee to conduct initial interviews with parents, victims, suspects, or witnesses, where applicable.*

*Reimbursement is not required for any investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a); in the event that the mandated reporter is employed by the same child protective*

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<sup>147</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

<sup>148</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

*agency required to investigate and submit the “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).*

*Reimbursement is not required for investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a detective, the conducting of follow-up interviews, and the potential making of an arrest.*

2) *Forward reports to the Department of Justice*

*Prepare and submit 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, as defined in Penal Code section 11165.12. Unfounded or inconclusive 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.<sup>149</sup>*

*This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated to a finding of inconclusive or unfounded, or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI. Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.*

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<sup>149</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

#### 4. Notifications Following Reports to the Child Abuse Central Index

The test claim statement of decision approved the following notice requirements:

*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, § 11169, subd. (b).)<sup>150</sup>*
- *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, § 11170, subd. (b)(1).)<sup>151</sup>*
- *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, § 11170, subd. (b)(2).)<sup>152</sup>*
- *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 reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)<sup>153</sup>*

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<sup>150</sup> As amended by Statutes 1997, chapter 842, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

<sup>151</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

<sup>152</sup> *Ibid.*

<sup>153</sup> As amended by Statutes 1997, chapter 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. This subdivision was renumbered by Statutes 2004, chapter 842.

The claimant has proposed reimbursement for the following activity:

*3. Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form [Standard time is 13 minutes]<sup>154</sup>*

Form SOC 832 was developed by CDSS, and is intended for use by county welfare departments to inform a known or suspected abuser that he or she has been reported to the CACI. It is not clear, based on the evidence in the record, whether any other agencies or departments also employ this form, but the Commission finds that completion of the Notice of Child Abuse Central Index Listing form (SOC 832), at item 3, above, is a reasonable means of implementing the expressly approved activity to “[n]otify 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.”<sup>155</sup>

Additionally, the activity described here, to notify a suspected abuser that he or she has been listed in the index at the time the agency files the “Child Abuse Investigation Report” with DOJ, is ended, for law enforcement, as of January 1, 2012. This requirement arises from Penal Code section 11169, which, as discussed above, was amended in Statutes 2011, chapter 468, ending the requirement for law enforcement to forward reports of suspected child abuse to DOJ as of January 1, 2012. Because the requirement above is to notify the suspected abuser *at the time the report is filed with DOJ*, and because law enforcement agencies “shall no longer” file those reports, the notice requirement is also ended.

The parameters and guidelines will reflect the completion of the form SOC 832, as a reasonable means of implementing the approved activity, and will reflect the end date of this activity for law enforcement agencies, as follows:

*a. City and county police or sheriff’s departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:*

- 1) 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.<sup>156</sup>*

*This activity includes, where applicable, the completion of the Notice of Child Abuse Central Index Listing form (SOC 832), or subsequent designated form.*

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<sup>154</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, at pp. 23-24.

<sup>155</sup> Exhibit A, Test Claim Statement of Decision, at p. 45.

<sup>156</sup> Penal Code section 11169(c) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241)). This activity is ended for law enforcement as of January 1, 2012, pursuant to Statutes 2011, chapter 468 (AB 717).

*For law enforcement agencies only, this activity is eligible for reimbursement from July 1, 1999 until December 31, 2011, pursuant to amendments to Penal Code section 11169(b), enacted in Statutes 2011, chapter 468 (AB 717), which ends the mandate to report to DOJ for law enforcement agencies.*

¶...¶

The test claim statement of decision also approved the following, related to the notice requirements, and triggered by the receipt of information from the CACI during the course of a routine investigation, or an investigation of a current report of suspected child abuse or neglect:

*Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office 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, § 11170, subd. (b)(6)(A), now (b)(8)(A).)*<sup>157</sup>

Information implicating the requirement to obtain and review the original report may be *received from DOJ* by the means described in section 11170. Section 11170, as amended by Statutes 2000, chapter 916, provides, in pertinent part:

The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency...

¶...¶

The department shall make 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 information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 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...

¶...¶

The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of

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<sup>157</sup> *Ibid.*

children...information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child.

¶...¶

Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or an agency or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, 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.<sup>158</sup>

Thus the duty to obtain and objectively review the original investigative report is implicated when an agency, in the conduct of its ordinary duties, has occasion to inquire to DOJ regarding an individual currently under investigation regarding an instance of known or suspected child abuse, or before the agency seeking a license, or placement of a child, or an employee of a licensee or home in which a child would be placed. In such case, the DOJ is instructed by the above statute that it “shall make available” the information requested, and the agency, in turn, is required, when a listing in the CACI is made known, to obtain the original investigative report, and to review it objectively in order to evaluate licensing, placement, or prosecution decisions. The section then requires that persons or agencies, when conducting their existing duties to investigate cases of known or suspected child abuse, or when making a licensing determination, or when assessing the possible placement of children in a home, shall, *upon receipt of information from DOJ* regarding an individual suspected of child abuse, or regarding an instance of suspected child abuse, obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence and its sufficiency for making decisions within the agency’s or person’s discretion.

The purpose of this section can be inferred from its context, and from the expansion of its scope subsequent to Statutes 2000, chapter 916: Penal Code section 11170(b)(10) (renumbered) now imposes the same requirements on a Court Appointed Special Advocate investigating prospective employees or volunteers, a local government agency conducting a background check on a prospective peace officer employee, and a county welfare or adoption agency conducting a background check on a prospective employee or volunteer.<sup>159</sup> These are not persons who would

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<sup>158</sup> Penal Code section 11170(b) (Stats. 2000, ch. 916 (AB 1241)).

<sup>159</sup> Penal Code section 11170(b)(10) Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2005, ch. 279 (SB 1107); Stats. 2006, ch. 701 (AB 525); Stats. 2007, ch. 160 (AB 369); Stats. 2007, ch. 583 (SB 703); Stats. 2008, ch. 701 (AB 2651); Stats. 2008, ch. 553 (AB 2618); Stats. 2008, ch. 701 (AB 2651); Stats. 2009, ch. 91 (AB 247); Stats. 2010, ch. 328 (SB

normally be subject to an active, targeted investigation seeking information regarding suspected child abuse; rather, they are persons who would be subject to a routine background investigation before they can be granted employment, or some other benefit. The Commission does not here seek to exercise jurisdiction over subsequent amendments to section 11170; the expanded scope of the section is discussed only as it helps to illuminate the purpose of the requirement, which is to obtain and objectively review a report of suspected child abuse, when information is received from DOJ regarding an individual before the agency in the normal course of the agency's duties. The purpose of the test claim statute (section 11170, as last amended in 2000), then, must be to protect the individual seeking a license, or placement of a child in his or her home, from being summarily denied on the basis of a report contained in the CACI. And, with respect to a person being investigated for a more recent instance of known or suspected child abuse, the test claim statute is meant to ensure that a district attorney or other law enforcement or child protective agency does not pre-judge the individual based solely upon the existence of a prior report in the CACI; the investigating agency, or district attorney, must obtain and objectively review the prior report, and evaluate "its sufficiency for making decisions."<sup>160</sup>

However, the Commission finds that reimbursement is only required for the costs of *obtaining the original report and reviewing the report objectively*. This section *does not* mandate reimbursement of any investigative activities that implicate the requirement to obtain the original report, nor any investigative activities that might be necessary after reviewing the report with respect to "making decisions regarding investigation, prosecution, licensing, or placement of a child."<sup>161</sup>

Based on the foregoing, the parameters and guidelines provide for reimbursement as follows:

*City or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:*

*Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and shall objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.*

***Reimbursement for this activity does not include investigative activities conducted by the agency, either prior to or subsequent to receipt of the information that necessitates obtaining and reviewing the investigative report.***

Finally, the test claim statement of decision approved the following notice requirement, pertaining to a CACI inquiry made prior to temporary custody or placement of a child.

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1330); Stats. 2011, ch. 459 (AB 212); Stats. 2011, ch. 468 (AB 717); Stats. 2012, ch. 846 (AB 1712); Stats. 2012, ch. 848 (AB 1707)).

<sup>160</sup> Penal Code section 11170(b)(6) (Stats. 2000, ch. 916 (AB 1241)).

<sup>161</sup> *Ibid.*

*Any city or county law enforcement agency, county probation department, or county welfare department shall:*

- *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, § 11170, subd. (c).)*

This activity is included in the parameters and guidelines without substantial analysis. The remaining notice requirements approved in the test claim statement of decision, as stated above, are also included in the parameters and guidelines without substantial analysis.

## **5. Record Retention**

The test claim statement of decision approved reimbursement for record retention by local government agencies as follows:

*Any city or county police or sheriff's department, or 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 eight years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 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.

*A county welfare department shall:*

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 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.<sup>162</sup>

Penal Code section 11169 provides that “Agencies, including police departments and sheriff's departments, shall retain child abuse or neglect investigative reports that result or resulted in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the CACI pursuant to this section and subdivision (a) of Section 11170.”<sup>163</sup> Penal Code section 11170 provides that information from an inconclusive or unsubstantiated report is removed from CACI after 10 years, unless a new report of suspected child abuse is received relating to the same person or persons within that

<sup>162</sup> Exhibit A, Test Claim Statement of Decision, at pp. 46-47 [citations omitted].

<sup>163</sup> Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

time. However, because agencies subject to the test claim statute were already subject to record retention time frames for these reports, claimants are only eligible for reimbursement for the higher level of service; the length of time exceeding the prior requirement.

Government Code sections 26202 and 34090 allow cities and counties, respectively, to authorize destruction of records after two years. The Commission found that while the test claim statute requires a minimum 10 years of record retention, the initial two years are not reimbursable because of this existing requirement. The additional minimum of eight years is reimbursable under the test claim statute, and the parameters and guidelines reflect this analysis.<sup>164</sup>

Similarly, Welfare and Institutions Code section 10851 permits destruction of records after three years for county welfare departments. The Commission found that because county welfare departments already had a duty to retain records for three years under Welfare and Institutions Code section 10851, records retention for a minimum of seven years should be reimbursed under the test claim: the length of time added to the retention requirement by the test claim statute.<sup>165</sup> The parameters and guidelines reflect this analysis.

The parameters and guidelines provide for reimbursement of eight and seven years, respectively, for record retention for county probation departments and county welfare departments. As explained here and in the test claim statement of decision, the years for which claimants are eligible for reimbursement for record retention are those eight and seven years, respectively, that *follow* the two or three year retention period required under prior law. Therefore the Commission adopts the following language:

*City and county police or sheriff's departments, and county probation departments 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 eight years for counties and cities (a higher level of service above the prior two-year record retention requirement pursuant to Gov. Code §§ 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.*<sup>166</sup>

*This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.*

***Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.***

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<sup>164</sup> Exhibit A, Test Claim Statement of Decision, at pp. 37-38.

<sup>165</sup> *Ibid.*

<sup>166</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

*County welfare departments shall:*

*Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the prior three-year record retention requirement pursuant to Welf. & Inst. Code, § 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.<sup>167</sup>*

*This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.*

***Reimbursement is not required for the first three years of record retention required under prior law, but only for the seven years following.***

## **6. Due Process Procedures Extended to Individual Listed in CACI**

The claimant has proposed reimbursement for due process requirements implicated by the test claim statutes, as follows:

*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].*

DOF suggests striking this requirement entirely, but without comment.<sup>168</sup> SCO suggests limiting this activity to one-time development of ICAN due process procedures.<sup>169</sup> These comments are set aside, pursuant to the following analysis.

It is not clear whether the claimant's proposed language encompasses the actual implementation of due process procedures and the provision of a constitutionally-appropriate hearing for individuals whose rights are affected by the test claim statutes, or is limited to the development of due process procedures. The following analysis will demonstrate that agencies have always been responsible, under the Constitution and laws of the United States, and of California, to provide due process protections to those listed in the Child Abuse Central Index, and that Statutes 2011, chapter 468 codified these protections in Penal Code section 11169. Claimants are therefore eligible for reimbursement for the ongoing costs of providing due process in each individual case, as well as the one-time costs of developing due process procedures.

- a. An individual's inclusion within the Child Abuse Central Index triggers that person's due process rights.

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<sup>167</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

<sup>168</sup> Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 2.

<sup>169</sup> Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

The test claim statement of decision was adopted in 2007, without discussion of the precise contours of due process protections implicated by the test claim statute. In 2009 the Ninth Circuit Court of Appeals decided *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170, in which it was held that CANRA triggers an individual's 14th Amendment rights to due process of law, because inclusion in the CACI can affect a person's liberty or property interests: certain licenses, and a number of relevant vocations, are not available to a person listed in the CACI.<sup>170</sup>

The plaintiffs in *Humphries* were listed in the CACI as a result of an allegation of child abuse made by a rebellious teenager.<sup>171</sup> Out-of-state investigators determined that the report of child abuse was "substantiated," and the Humphries were arrested by Los Angeles County Sheriff's Department officers and the report of suspected child abuse forwarded to DOJ for listing in the index.<sup>172</sup> The Humphries were later cleared of any wrongdoing by the courts, but were unable to have their names removed from the CACI, in part because the investigator who had forwarded their names in the first instance was no longer employed with the department.<sup>173</sup>

The Humphries alleged that their listing in the CACI impacted their reputations and potentially their livelihood: Mrs. Humphries worked as a special education teacher, and introduced evidence that renewal of her teaching credentials might be halted by the information in the CACI.<sup>174</sup>

Mrs. Humphries also indicated that her desire to pursue a degree in psychology was threatened by her inclusion in the CACI, because portions of her psychology coursework included working in a child care program, which in turn would require a CACI background check. The court found that this evidence implicated the Humphries' rights to procedural due process.

The court determined that listing in the CACI deprived the Humphries of rights secured by the Constitution and laws of the United States. Specifically, the stigma of being listed in the CACI, along with the statutory consequences, including the inability to obtain certain licenses or credentials, constituted a violation of protected liberty interests.<sup>175</sup> The court held that a "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 violate[d] the Humphries' due process rights." Because certain licensing agencies are required to consult the CACI before issuing licenses, "the CACI cease[s] to be a mere investigatory tool, [and becomes], in substance, a judgment against those listed."<sup>176</sup> The court did not seek to dictate exactly what due process is required, but stated:

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<sup>170</sup> See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 8.

<sup>171</sup> *Humphries, supra*, 554 F.3d 1170, at p. 1180.

<sup>172</sup> *Ibid.*

<sup>173</sup> *Id.*, at pp. 1181-1182.

<sup>174</sup> *Id.*, at p. 1183.

<sup>175</sup> *Id.*, at pp. 1185-1189.

<sup>176</sup> *Humphries, supra*, 554 F.3d 1170, at p. 1201.

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.<sup>177</sup>

Based on the court’s reasoning in *Humphries*, it is clear that some due process is owed to those listed in the CACI, to ensure that the listings are not erroneous, and that an innocent person is not unduly damaged. At a minimum, due process requires notice, and an opportunity to be heard before an impartial fact finder.

b. Due process protections recognized in *Humphries* were incorporated in the subsequent amendments to the test claim statutes.

After and in accordance with *Humphries*, the Legislature sought to include basic due process protections in the statutes that make up CANRA. These requirements are declaratory of existing federal and state due process protections and do not require a new test claim decision. Due process protections identified in *Humphries* and codified by the Legislature are reasonably necessary to comply with the mandate; moreover, the amendments made to section 11169 are implementing existing constitutional requirements triggered by the test claim statutes, not imposing additional mandated activities.

Subdivisions (d) through (g) were added to section 11169 by Statutes 2011, chapter 468, as follows:

(d) Subject to subdivision (e), any person who is listed on the CACI has the right to a hearing before the agency that requested his or her inclusion in the CACI to challenge his or her listing on the CACI. The hearing shall satisfy due process requirements. It is the intent of the Legislature that the hearing provided for by this subdivision shall not be construed to be inconsistent with hearing proceedings available to persons who have been listed on the CACI prior to the enactment of the act that added this subdivision.

(e) A hearing requested pursuant to subdivision (d) shall be denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court. A person who is listed on the CACI and has been denied a hearing pursuant to this subdivision has a right to a hearing pursuant to subdivision (d) only if the court’s jurisdiction has terminated, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and a hearing has not previously been provided to the listed person pursuant to subdivision (d).

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<sup>177</sup> *Ibid.*

(f) Any person listed in the CACI who has reached 100 years of age shall have his or her listing removed from the CACI.

(g) If, after a hearing pursuant to subdivision (d) or a court proceeding described in subdivision (e), it is determined the person's CACI listing was based on a report that was not substantiated, the agency shall notify the Department of Justice of that result and the department shall remove that person's name from the CACI.

These changes, recognizing that “CACI has been the subject of substantial litigation over the years, principally involving issues related to due process of law,” are intended “to address the issues raised in previous lawsuits” regarding the constitutionality of the CACI.<sup>178</sup> The Legislative Counsel’s digest preceding the bill provides as follows:

Existing law charges the Department of Justice with maintaining CACI and requires that the index be continually updated by the department and not contain any reports that are determined to be unfounded.

This bill would instead provide that only information from reports that are reported as substantiated would be filed, and all other determinations would be removed from the centralized list. The bill would also provide that any person who is listed on the CACI has the right to an agency hearing, as specified, to challenge his or her listing on the CACI. The bill would require the hearing to meet due process requirements. The bill would also specify the circumstances under which the hearing may be denied. The bill would further provide that a person who is listed on the CACI has a right to that hearing if the court’s jurisdiction terminates, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and that hearing has not been provided previously to the listed person. After that hearing or a court proceeding, if it is determined that the person’s CACI listing was based on a report that was not substantiated, the agency would be required to notify the department of that result and the department shall remove that person’s name from the CACI.

The Committee analysis also states that “[t]he provisions of this bill seeking to ensure that CACI is operated in a constitutional manner are likely to result in significant future litigation-related cost savings potentially in the millions of dollars to the DOJ and local agencies.” While this statement captures the intent of cost-savings, it also recognizes the intent to alter the operation of the CACI to achieve consistency with constitutional requirements. Therefore the Commission finds that the amendments to section 11170, effected by Statutes 2011, chapter 468, are not newly mandated requirements, but are codifying and clarifying existing federal and state constitutional requirements.

- c. Due process protections required under the Constitution of the United States, or under the Constitution and laws of the State of California, when triggered by state-mandated activities, are reimbursable pursuant to Article XIII B, section 6.

In *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, the California Supreme Court held that all due process procedures and costs resulting from

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<sup>178</sup> Exhibit X, Senate Committee Analysis, AB 717.

expulsions made mandatory by the test claim statute were reimbursable, whether arising from federal law or state law.<sup>179</sup> Education Code section 48915, in pertinent part, “(1) *compelled* a school principal to *immediately suspend* any student found to be in possession of a firearm at school or at a school activity off school grounds, and (2) *mandated* a recommendation to the school district governing board that the student be expelled.”<sup>180</sup> The court noted that “whenever expulsion is recommended [under state law] a student has a right to an expulsion hearing.” The court held, “[a]ccordingly, it is appropriate to characterize the former provision as *mandating* immediate suspension, a recommendation of expulsion, *and hence, an expulsion hearing.*”<sup>181</sup>

The Commission, in its test claim statement of decision prior to *San Diego Unified*, had excepted the federal due process requirements from reimbursement pursuant to Government Code section 17556, finding that only the due process requirements imposed by the test claim statute that were in excess of the federal requirements should be reimbursable.<sup>182</sup> The court disagreed, finding that section 17556 was not applicable to the facts; that Education Code section 48915, providing for mandatory expulsions in certain situations, does not “implement federal law,” and therefore due process costs arising from both federal and state law and Constitutions are reimbursable when an expulsion recommendation is made mandatory under state statute.<sup>183</sup>

d. The one-time development of due process procedures, as well as the ongoing provision of due process protections to listed individuals, are approved.

Due process procedures were not expressly approved in the test claim statement of decision, nor are due process requirements found in the language of the test claim statutes, as pled. Rather the *Humphries* decision recognized a due process right inherent in the existence and application of the CACI, and the Legislature subsequently amended the code to include due process protections. *San Diego Unified* is in accord, in that it makes clear that due process procedures triggered by state-mandated activities are reimbursable whether arising under state or federal law or Constitution.<sup>184</sup> The Commission now must accept the courts’ findings and hold that due process protections triggered by test claim statutes surrounding the CACI are reimbursable.

The court in *Humphries* directed the state to institute “some kind of hearing” process to provide a remedy for those who would challenge their listing in the CACI, and provided that the hearing must be before someone other than the person who performed the investigation.<sup>185</sup> The very fact that the *Humphries*’ were forced to sue (as well as the amendments to the code following thereafter) demonstrates that it is unlikely that adequate due process procedures existed prior to that 2009 case, at least in Los Angeles County. The Department of Social Services has adopted

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<sup>179</sup> Discretionary expulsions were held not to give rise to reimbursable costs, including due process procedures triggered.

<sup>180</sup> *San Diego Unified, supra*, at p. 869.

<sup>181</sup> *Id.*, at p. 870.

<sup>182</sup> *Id.*, at pp. 872-873.

<sup>183</sup> *Id.*, at p. 881.

<sup>184</sup> *San Diego Unified, supra*, at p. 881.

<sup>185</sup> *Humphries, supra*, 554 F.3d 1170, at p. 1201.

procedures that appear at first glance to satisfy due process, as interpreted by the court in *Humphries*, but those measures, adopted in settlement of another due process case, only extended to county welfare departments at that time, and were not required of law enforcement agencies. This is yet another reason for the amendments made in Statutes 2011, chapter 468 (AB 717).<sup>186</sup>

Based on the court's express finding that due process protections are owed, reimbursement for the development and implementation of those procedures is reasonably necessary to carry out the mandate. However, the claimant has submitted no evidence that due process procedures must be continually "develop[ed] and maintain[ed]." Therefore, approval of this activity is limited to a one-time activity of developing procedures for this program, consistent with the Legislature's expression of the constitutional requirements, rather than an on-going activity including "maintain[ing]" due process procedures.

The actual provision of due process protections to individuals who seek to challenge being listed in the CACI is reimbursable, based on the holdings of *San Diego Unified* and *Humphries, supra*. Because listing in the CACI triggers 14<sup>th</sup> Amendment due process protections, the agency initiating the listing must provide sufficient due process to protect the rights of the individual against unconstitutional deprivation of a protected liberty interest. The cost of that process is thus reasonably necessary to carry out the mandate. Given that due process hearings will be required any time an individual seeks to challenge his or her inclusion in the CACI, this must be considered a reasonably necessary ongoing activity.

Accordingly, and consistently with the implications of the *Humphries* decision, and *San Diego Unified*, and the subsequent amendments to section 11169, the Commission finds that one-time development and implementation of due process procedures is approved for reimbursement in these parameters and guidelines. The Commission also approves ongoing provision of due process protections to individuals seeking to challenge their listing in the CACI, including notice and a hearing. Both of these activities are eligible for reimbursement by a showing of actual costs, and will require contemporaneous source documentation, as provided in the parameters and guidelines. It is unclear how many, if any, of the eligible claimants provided the mandated due process protections prior to the *Humphrey's* decision in 2009 or the amendment of 11169 in 2011 and what the scope of those protections might have been. However, any jurisdiction that did actually perform the mandated due process activities is eligible to claim for their actual costs incurred beginning July 1, 1999,

## **7. Requirements of County Welfare Departments Proposed by Claimant**

The claimant has proposed reimbursement for reporting activities of county welfare departments, some of which are not supported on the basis of the record, and exceed the scope of the mandate. The claimant proposes reimbursement for the following reporting activities for county welfare departments:

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]*

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<sup>186</sup> Exhibit X, Senate Committee Analysis, AB 717.

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].*<sup>187</sup>

The Commission finds that preparing and submitting the Child Abuse Summary Report form (SS 8583) is expressly approved in the test claim statement of decision, as part and parcel of the completion of an investigation and forwarding of reports to DOJ. The parameters and guidelines reflect this activity, as discussed above, and it is not necessary to further analyze this activity here.

Completion of a “Notice of Child Abuse Central Index Listing (SOC 832) form” is discussed above with respect to providing notice to a suspected abuser that he or she has been listed in the index. The Commission finds, as stated above, that the completion of the form is a reasonable method by which to comply with the mandate, and the parameters and guidelines reflect reimbursement for this activity, where applicable.

Additionally, the claimant proposes reimbursement for “[f]iling copies of the SS 8583 and SS 8572 forms with a copy of the investigative report.” The Child Abuse Summary Report, form 8583, is the form forwarded to DOJ. The Suspected Child Abuse Report, form 8572, originates with the mandated reporter, and is received by the investigating agency; this is the report that precipitates all reimbursable activities under CANRA. The activity proposed above might be interpreted to include filing copies of the forms with DOJ, but this is clearly not required by DOJ regulations.<sup>188</sup> Therefore, it more likely is intended to mean filing copies of the incoming (8572) and outgoing (8583) forms with the investigating agency’s investigation report, retained by the agency. Retention of these forms is included in the parameters and guidelines language regarding the expressly approved activities regarding retention of records of suspected child abuse.

The remaining activities cited above are not supported by evidence in the record. In particular, the Suspected Child Abuse Report form (SS 8572) is the same form employed by mandated reporters, individuals whose activities are not subject to reimbursement. It is not clear based on the evidence in the record why county welfare *agencies* should be reimbursed for completing the Child Abuse Summary Report form, while county welfare *employees* would be subject, as individuals, based on their vocation, to the mandatory reporting requirements, which are not reimbursable. In other words, a psychologist, or doctor, would be considered a mandatory reporter by vocation and training, whether employed by the county, or some private entity. Therefore, as was explicitly found in the test claim statement of decision, the mandated reporter activity, to complete the Child Abuse Summary Report form, is not unique to government, and

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<sup>187</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, at pp. 23-24.

<sup>188</sup> California Code of Regulations, title 11, section 903 (Register 98, No. 29) [requirement to report to DOJ using Form 8583, but no requirement to retain a copy of the Form 8583].

does not impose a reimbursable new program or higher level of service.<sup>189</sup> Submittal of this form to the child protective agency is the triggering event for the mandate—without it there are no mandated activities.

Furthermore, it is unclear from what approved activity in the test claim statement of decision the claimant derives the alleged reasonably necessary activity “Response to DOJ inquiries (9 min).” It could be asserted that responding to DOJ inquiries is a reasonably necessary activity, but the claimant has provided no explanation as to what would give rise to a DOJ inquiry, nor any explanation of what inquiries are proposed to be reimbursable.<sup>190</sup> DOJ does not take any responsibility for the accuracy of the information maintained in the index: “DOJ does not conduct an investigation to verify the accuracy of the information submitted nor does it investigate the quality or accuracy of the abuse or severe neglect investigation conducted by the submitting agency.”<sup>191</sup> DOJ serves only as a repository of information, based on the language of the test claim statutes. Therefore it is unknown what sort of inquiry DOJ might undertake to make. The claimant has provided no evidence in the record explaining what a “DOJ inquiry” entails, and therefore this activity must be denied.

Based on the foregoing, the Commission finds that the preparing and submitting the Child Abuse Summary Report, form SS 8583, retaining copies of the Child Abuse Summary Report form SS 8583 and the Suspected Child Abuse Report form SS 8572, and the completion of the Notice of Child Abuse Central Index Listing, form SOC 832, are approved elsewhere in this analysis, and incorporated within the parameters and guidelines, as appropriate. The remaining proposed activities are denied.

### **C. Claim Preparation and RRM Proposal (Section V. of Proposed Parameters and Guidelines)**

The claimant has proposed standard times RRM for specified activities, including investigative activities performed by law enforcement agencies, and complying with reporting and notice requirements by county welfare departments. The claimant’s proposed RRM will be incorporated into the discussion below, where relevant.

For the following reasons, the Commission finds that the evidence and exhibits submitted are not sufficient to support adoption of the proposed RRM, consistent with the constitutional and statutory requirements of RRM, and of Commission decisions generally. While an RRM proposal need not be based on actual cost data, nor precisely reimburse every dollar to every claimant, an RRM must reasonably reimburse claimants for the costs mandated by the state, and an RRM proposal must be based on substantial evidence, like any other Commission decision. Here, as discussed below, there is not sufficient evidence in the record to meet the substantial evidence standard, and to adopt the RRM for reimbursement on the basis of this record.

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<sup>189</sup> Exhibit A, Test Claim Statement of Decision, at pp. 15-16 [Duties alleged under Penal Code section 11166 “are not required of local entities, but of mandated reporters as individual citizens,” and are therefore not a reimbursable state-mandated new program or higher level of service].

<sup>190</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, at pp. 23-24.

<sup>191</sup> Code of Regulations, title 11, section 902 (Reg. 2002, No. 17; Reg. 2006, No. 19; Reg. 2010, No. 2).

Thus, the parameters and guidelines include the Commission’s standard language for actual cost reimbursement in Section V, requiring documentation to support the claims for reimbursement.

**a. The purpose of an RRM is to reimburse local government efficiently and simply, with minimal auditing and documentation required.**

1. The reimbursement requirement

Article XIII B, section 6 of the California Constitution provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government [defined to include school districts], the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]...”

This reimbursement obligation was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.”<sup>192</sup> Section 17561(a) states: “[t]he state *shall* reimburse each local agency and school district for *all* ‘costs mandated by the state,’ as defined in Section 17514.”<sup>193</sup> Government Code section 17514, in turn, defines “costs mandated by the state” as any increased cost incurred as a result of any state statute or executive order that mandates a new program or higher level of service.<sup>194</sup> The courts have interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.<sup>195</sup> The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.<sup>196</sup>

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<sup>192</sup>*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

<sup>193</sup> Government Code section 17561 (Stats. 2009, ch. 4, § 4 (SB3X 8)) [emphasis added].

<sup>194</sup> Government Code section 17514 (Stats. 1984, ch. 1459 § 1).

<sup>195</sup> Exhibit X, *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

<sup>196</sup> Government Code section 17500 et seq.

## 2. Statutory flexibility and constitutional consistency

Statutory provision for the adoption of an RRM was originally enacted in 2004, and amended in 2007 to promote greater flexibility in adoption of an RRM.<sup>197</sup> In a 2007 report, the Legislative Analyst's Office (LAO) states that an RRM is intended to reduce local and state costs to file, process, and audit claims; and to reduce disputes regarding mandate claims and State Controller's claim reductions. The report identifies, under the heading "Concerns With the Mandate Process," the difficulties under the statutes then-in-effect:

- Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or "parameters and guidelines") typically require local governments to document their actual costs to carry out each element of the mandate.
- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller's Office.

The LAO's recommendation to address these issues was to:

Expand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute...<sup>198</sup>

Former section 17518.5 provided that an RRM must "meet the following conditions:"

- (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.<sup>199</sup>

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<sup>197</sup> Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856); amended by Stats. 2007, ch. 329 (AB 1222)).

<sup>198</sup> Exhibit X, "State-Local Working Group Proposal to Improve the Mandate Process," Legislative Analyst's Office, June 21, 2007, page 3. See also, Assembly Bill Analysis of AB 2856 (2004), concurrence in Senate Amendments of August 17, 2004; Assembly Bill Analysis of AB 1222 (2007), concurrence in Senate Amendments of September 4, 2007. These bill analyses identify the purpose of the RRM process is to "streamline the documentation and reporting process for mandates.;" *Kaufman & Broad Communities, Inc. v. Performance Plastering* (Cal. Ct. App. 3d Dist. 2005) 133 Cal.App.4th 26, at pp. 31-32 [Reports of the Legislative Analyst's Office may properly be considered, as legislative history, to determine the legislative intent of a statute].

<sup>199</sup> Exhibit X, Government Code section 17518.5 (Stats. 2004, ch. 890 § 6 (AB 2856)).

The LAO's recommendations were implemented in Statutes 2007, chapter 329 (AB 1222). Section 17518.5 now defines an RRM as follows:

- (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or projections of other local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost efficient manner.
- (d) 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 costs . . . .
- (e) A reasonable reimbursement methodology may be developed by any of the following:
  - (1) The Department of Finance.
  - (2) The Controller.
  - (3) An affected state agency.
  - (4) A claimant.
  - (5) An interested party.<sup>200</sup>

An RRM diverges from the traditional requirement of supporting a reimbursement claim with detailed documentation of actual costs incurred and, instead, applies a standard formula or single standard unit cost, based on approximations of local costs mandated by the state. A unit cost or, in this case, unit times, based on approximations or other projections may result in some entities receiving more than their actual costs incurred to comply with a mandated program, and some receiving less.

While considering *Voter Identification Procedures* (03-TC-23), Commission staff requested comments from the parties and interested parties to three claims that were pending on a proposed unit cost RRM,<sup>201</sup> on the following questions: "At some point is the range of figures used to develop the unit cost so wide that it violates the constitutional requirement that local agencies be reimbursed for their mandate-related costs?"<sup>202</sup> The claimants in the *Behavioral Intervention*

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<sup>200</sup> Exhibit X, Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

<sup>201</sup> *Behavioral Intervention Plans* (CSM-4464); *Habitual Truants* (09-PGA-01, 01-PGA-06) (CSM-4487 and CSM-4487A); *Voter Identification Procedures* (03-TC-23).

<sup>202</sup> Exhibit F, Commission Request for Comments on Pending RRMs.

*Plans* (BIPS) argued that the 2007 amendments to the RRM statute evidence the Legislature’s conclusion that levels of mandate reimbursement may range widely and still be constitutional:

Since 2007, the current requirements for RRM are considerably less specific and more flexible than the former requirements. Now, there is no requirement that a minimum percentage of claimants’ projected costs be fully offset or that the total amount to be reimbursed statewide covers the total of local estimated costs. Since 2007, Section 17518.5 requires only that RRM “be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs,” and that the RRM “consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.” In other words, the statute expressly contemplates variation and leaves open the possibility for a potentially large degree of variation in the costs offset.<sup>203</sup>

The claimant in this test claim argued also that under the amended statute an RRM may be valid even where “some survey respondents receive less than half of their costs,” or less than half of respondents recover their full costs. The claimant also argued that “[a]ccordingly, while RRM surveys initially produce a wide range of responses which may appear inequitable, that is not, in and of itself, a basis for maintaining that the proposed RRM rate is constitutionally prohibited.”<sup>204</sup> The claimant’s observation of the highly permissive nature of the amended statute is, in part, correct. But the conclusion as to what may be constitutionally permitted is not supportable. As the following analysis will demonstrate, the statutory requirements are highly flexible, but whether an RRM can reasonably be adopted will turn on whether it provides reimbursement reasonably in line with costs incurred by eligible claimants and whether it is supported by substantial evidence in the record.

### 3. Constitutional requirement of reasonable reimbursement

The 2007 amendments to section 17518.5, as explained above, provide for more flexibility when adopting a unit cost RRM, as compared with the prior section enacted in 2004. However, a unit cost must represent a reasonable approximation of the costs incurred by eligible claimants to implement the state-mandated program, in order to comply with the constitutional requirement that *all costs mandated by the state* be reimbursed to a local government entity. In certain circumstances, a unit cost based on a significant or large variation of costs reported may not reasonably represent the costs incurred by eligible claimants and, thus, may not comply with the requirements of article XIII B, section 6 of the California Constitution. On the other hand, given the purpose of the RRM, to “balance accuracy with simplicity,” some degree of variation in costs will usually be permissible.

The reimbursement requirement is a constitutional imperative, but the Legislature has the power to enact statutes that provide “reasonable” regulation and control of rights granted under the Constitution.<sup>205</sup> The Commission must presume that the Government Code sections providing

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<sup>203</sup> Exhibit X, *BIPs Claimants’ Response to Request for Comments on Pending RRMs*, December 20, 2011 [citations omitted].

<sup>204</sup> Exhibit G, *Claimant’s Response to Request for Comments*, at p. 2.

<sup>205</sup> Exhibit X, *Chesney v. Byram* (1940) 15 Cal.2d 460, 465.

for the consideration and adoption of RRM's meet this standard and are constitutionally valid.<sup>206</sup> Section 17557(f) of the Government Code provides that the Commission, in adopting parameters and guidelines “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity” [emphasis added].<sup>207</sup> Section 17518.5, as amended, provides for a high degree of flexibility in the adoption of an RRM. Therefore, the Commission must presume that an RRM may be adopted on the basis of any reasonable information that constitutes substantial evidence, and that an RRM that “balances accuracy with simplicity” in reimbursement is permissible under the statute, and thus, constitutional, even if individual claimants are not fully or precisely reimbursed for each activity in each fiscal year.

The Commission must apply Government Code section 17518.5 in a constitutional manner. If the Commission approves a unit cost that does not comply with the requirements of the applicable code sections and does not represent a reasonable approximation of costs incurred by eligible claimants to comply with the mandated program, then the Commission’s decision could be determined unconstitutional as applied to the case and determined invalid by the courts.<sup>208</sup>

**b. The only statutory requirements of an adopted RRM are that it balances accuracy in reimbursement with simplicity in the claiming process, and that it considers the variation in costs among eligible claimants.**

As alluded to above, the statutory requirements to adopt an RRM are minimal, and very broad. Government Code section 17518.5, as amended in 2007, eliminates both the prior rule that 50% of eligible claimants have their costs fully offset, and the rule that the total amount to be reimbursed under an RRM must be equal to the total statewide cost estimate. Given the “Concerns with the Mandates Process” described by the LAO, and to which the amendments were addressed, the new statute should be interpreted with an eye toward less stringent requirements for documentation of costs, and less burdensome measuring of the marginal costs of higher levels of service.<sup>209</sup> In other words, rather than providing rigid requirements or elements to which an RRM proposal for adoption must adhere, the amended statute focuses on the *sources of information for the development of an RRM*, and only requires that the end result “balances accuracy with simplicity.”<sup>210</sup> Section 1183.131 of the regulations provides that a proposed RRM “shall include any documentation or *assumption relied upon* to develop the proposed methodology.” The Commission’s regulations thus further support a view of the RRM statute (section 17518.5) as being focused on the information to be used, rather than any specific

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<sup>206</sup> Exhibit X, *CSBA II, supra*, 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837.

<sup>207</sup> Exhibit X, Government Code section 17557 (Stats. 2010, ch. 719 (SB 856) § 32).

<sup>208</sup> Exhibit X, *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.

<sup>209</sup> Exhibit X, *Kaufman & Broad Communities, supra*, 133 Cal.App.4th 26, at pp. 31-32 [LAO reports may be relied upon as evidence of legislative history].

<sup>210</sup> Government Code section 17557.

degree of precision or accuracy necessary.<sup>211</sup> Implicit, of course, is always the constitutional requirement that the end result must reasonably reimburse claimants for their mandated costs, as required by article XIII B, section 6. For these reasons, the Commission finds no statutory requirements or elements in sections 17518.5 and 17557, other than the requirements to balance accuracy with simplicity, and to consider the variation of costs among eligible claimants.

1. There is no statutory requirement that the adopted RRM be based on cost information from a representative sample of eligible claimants, and no minimum sample size required to be representative.

The statute provides that detailed, actual cost information is not required to develop an RRM. Section 17518.5 provides that an RRM “shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or *other projections of other local costs.*”<sup>212</sup> The statute does not *require* any one of these options; it merely outlines these as *possible sources* for the development of evidence to support an RRM. Neither does the statute provide for a minimum number of claimants to constitute a representative sample.

Here, the law enforcement surveys upon which the RRMs are based were responded to by twelve law enforcement agencies that together “serve over half the state’s population.”<sup>213</sup> The county welfare surveys were responded to by eight counties, serving “well over 50 percent of the State’s population.”<sup>214</sup> The law enforcement surveys were developed by the Los Angeles County Sheriff’s Department, in cooperation with the California State Association of Counties and the League of California Cities.<sup>215</sup> The county welfare department surveys were developed by “a core team of [Los Angeles] County staff, California Welfare Directors Association staff, and State Department of Social Services staff.

The Commission finds that section 17518.5 *does not require* that the adoption of the RRM be based on a representative sample of eligible claimants; “cost information from a representative sample of eligible claimants” is only *one source of evidence* upon which to base an RRM, along with “information provided by associations of local agencies and school districts, or *other projections* of local costs.”<sup>216</sup> Thus, whether the sample size, or the constitution of the sample, is representative should not be dispositive on the question whether an RRM may be adopted. The statutory standard does not demand a representative sample of eligible claimants in order to develop an RRM. Moreover, section 1183.13 of the Commission’s regulations provides that a

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<sup>211</sup> Exhibit X, Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

<sup>212</sup> Exhibit X, Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

<sup>213</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, Narrative at p. 11.

<sup>214</sup> *Id.*, at p. 19.

<sup>215</sup> *Id.*, at p. 2; See also, Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, Declaration of Suzie Ferrell, at p. 6.

<sup>216</sup> Exhibit X, Government Code section 17518.5 (Stats. 2007, ch. 329 (AB 1222) § 1) [emphasis added].

“representative sample of claimants does not include eligible claimants *that do not respond to surveys or otherwise participate* in submitting cost data.”<sup>217</sup>

Here, the claimants have submitted survey results from local agencies who responded to the survey request, and who represent over half the state’s population. The Commission may find that this constitutes a representative sample, in accordance with the ordinary meanings of “representative” and “sample,” and with the definition found in the Commission’s regulations, if the survey results are supported by admissible evidence in the record.<sup>218</sup>

2. There is no statutory requirement that the RRM be based on detailed, actual cost data, nor audited cost data.

The statute provides that an RRM “[w]henver possible... 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 costs.”<sup>219</sup>

As discussed above, the LAO recommendations that gave rise to the amendments to section 17518.5 were to expand the use of easy-to-administer reimbursement mechanisms. And, as discussed throughout this section, the amended text of section 17518.5 provides for flexibility in the development and adoption of RRM. The section cannot reasonably be read to require audited cost data to develop an RRM, especially in the case that the RRM is proposed as a part of the first parameters and guidelines after a test claim decision, at which time no audited cost data yet exists. Moreover, there is no requirement that the RRM be based on cost data at all, where a uniform time allowance, or “standard times” RRM is proposed.

Here, the RRM proposal includes standard times RRM for specified activities. The survey data upon which the RRM are based does not require actual dollar amounts for the specified activities, but rather focuses on the time expended for those activities, and bases reimbursement on those standard times applied to an individual claimant’s “blended productive hourly rate, in accordance with long established State Controller’s Office Instructions.”<sup>220</sup> In this respect the RRM are not based on “detailed documentation of actual costs,” but rather on a formula, based on survey data, or on what might be characterized as “other approximations.”<sup>221</sup>

A standard times RRM employed in this way could easily be characterized as a “general allocation formula...[or] other approximations of local costs,” and to the extent that it is based on time data rather than cost data, it is consistent with the minimal requirements of the statute.<sup>222</sup>

3. There is no statutory requirement that an RRM mitigate or eliminate cost variation among local government claimants.

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<sup>217</sup> Code of Regulations, Title 2, section 1183.13 (Register 2008, No. 17).

<sup>218</sup> Exhibit X, Webster’s New International Dictionary, [“representative,” and “sample,” defined]. See also Code of Regulations, Title 2, section 1183.13.

<sup>219</sup> Exhibit X, Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

<sup>220</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, Narrative at pp. 11-12.

<sup>221</sup> Exhibit X, Government Code section 17518.5 (Stats. 2007, ch. 329 (AB 1222)).

<sup>222</sup> *Ibid.*

Section 17518.5(c) provides that an RRM “shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.” The section does not require that an RRM *address* such variation, or that it *mitigate* or *eliminate* such variation.

Here, the claimant has proposed an RRM based on “standard times,” which are proposed to be applied to the “blended productive hourly rate” in order to calculate the amount of reimbursement for an individual claimant.<sup>223</sup> Although hourly rates of pay and benefits might vary from one county or city to another, it is not necessary to examine whether and to what extent that variation impacts the total costs of implementing the mandate, because the application of “standard times” to the hourly rates of personnel in different cities and counties will account for the variation, as long as the times themselves are defensible. In this way a standard times proposal does address, and arguably mitigates, any variation in costs among local government, to the extent that personnel costs constitute a significant variable.

As discussed above, the Commission in 2011 requested comments from a number of claimants and stakeholders on pending RRM proposals. One of the issues on which comments were sought was the meaning and import of the statutory language providing that an RRM “consider the variation in costs” among claimants “to implement the mandate in a cost-efficient manner.” The claimant responded to that issue, stating that “implementation of a mandate is cost-efficient if only reasonably necessary activities are performed and allowable costs incurred in the implementation of the mandate.”<sup>224</sup> The claimant then went on to excerpt several pages of discussion from the revised proposed parameters and guidelines submitted January 21, 2010.<sup>225</sup>

The Commission finds that section 17518.5(c) *does not require* that an RRM proposal *address, mitigate, eliminate, or otherwise equalize* variation in costs among local government, but that this proposal is structured in such a manner as to do so. The Commission finds that the data submitted, and the proposal based on those data, do “consider the variation,” as required, in order to arrive at the unit times proposed. The Commission finds further, that the claimant’s definition of “cost-efficient,” whether or not satisfied on this record, is not a complete and correct statement of the law and thus is not adopted.

4. Conclusion: section 17518.5 does not impose specific statutory requirements for the development and adoption of RRMs.

The Commission finds that the constitution requires that an RRM provide reimbursement reasonably in line with the reimbursable costs incurred by eligible claimants, but that the only statutory requirements for adoption of an RRM are: (1) that it balances accuracy with simplicity; and (2) that it considers variation in local costs. Detailed actual cost information is not required. Neither is cost information from a representative sample of eligible claimants required; nor audited data from multiple years of cost claims; nor an RRM proposal that addresses or mitigates variation in costs incurred among different districts. An RRM is meant to be based on an *approximation* of local costs, and need not necessarily precisely reimburse every dollar.

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<sup>223</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, Narrative, at p. 12.

<sup>224</sup> Exhibit G, Claimant’s Response to Request for Comments, at p. 4.

<sup>225</sup> *Id.*, at pp. 5-22.

**c. The Commission is not bound by strict evidence rules but must have substantial evidence in the record to support its decisions.**

**1. Substantial evidence standard for Commission proceedings**

Government Code section 17559 requires that Commission decisions be based on substantial evidence in the record. Section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, “to set aside a decision of the commission on the ground that the commission’s decision is not supported by substantial evidence.”<sup>226</sup> Government Code section 17559 also expressly provides “that the trial court review the decision of the Commission under the substantial evidence standard.”<sup>227</sup>

A broad array of evidence can be relied upon to adopt an RRM, under the amended statute.<sup>228</sup> However, statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole;<sup>229</sup> when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission’s findings be based on substantial evidence in the record. In 2010, the Commission clarified its regulations to specifically identify the quasi-judicial matters that are subject to these evidentiary rules, including proposed parameters and guidelines and requests to amend parameters and guidelines.<sup>230</sup> Thus, the plain language of the statutory and regulatory mandates scheme requires substantial evidence in the record to support the adoption of an RRM.

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<sup>226</sup> Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

<sup>227</sup> *City of San Jose v. State* (Cal. Ct. App. 6<sup>th</sup> Dist. 1996) 45 Cal.App.4<sup>th</sup> 1802, 1810.

<sup>228</sup> See Government Code 17518.5 [Statute employs terms like “projections;” “approximations”].

<sup>229</sup> Exhibit X, *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

<sup>230</sup> The courts, in recent lawsuits dealing with questions of fact, have determined that the Commission’s conclusions were not supported by any evidence in the record and, thus, the Commission’s decisions were determined invalid pursuant to Government Code section 17559 and Code of Civil Procedure section 1094.5. (See, *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 [Peace Officer Procedural Bill of Rights, on the issue of practical compulsion]; *State of California Department of Finance, State Water Resources Control Board, et al. v. Commission on State Mandates and County of San Diego, et al.*, Sacramento County Superior Court, Case No. 34-2010-80000604 [Discharge of Stormwater Runoff, on the issue of whether the permit requirements are considered to fall within the Maximum Extent Practicable standard of federal law]; *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al.*, Los Angeles County Superior Court, Case No. BS130730 [Municipal Storm Water and Urban Runoff Discharges, on the issue of whether the permit requirements are considered to fall within the Maximum Extent Practicable standard of federal law]).

## 2. Evidence rules for Commission proceedings.

The Commission is not required to observe strict evidentiary rules, but its decisions must be reasonable, and grounded in fairness. The courts have interpreted the evidentiary requirement for administrative proceedings as follows:

While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following: the evidence must be produced at the hearing by witnesses personally present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight, and this would apply to hearsay evidence concerning someone else's opinion; furthermore, cross-examination within reasonable limits must be allowed. Telephone calls to one of the officials sitting in the case, statements made in letters and arguments made in petitions should not be considered as evidence.<sup>231</sup>

Section 1187.5(a) of the Commission's regulations provides that when exercising the quasi-judicial functions of the Commission, "[a]ny relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."<sup>232</sup> This regulation is borrowed from the evidentiary requirements of the Administrative Procedures Act, which contains substantially the same language.<sup>233</sup> Both the Commission's regulations, and the Government Code, provide that hearsay evidence is admissible if it is inherently reliable, but *will not be sufficient in itself* to support a finding unless the evidence would be admissible over objection in a civil case; in other words, unless one of several hearsay exceptions applies.<sup>234</sup>

Section 1187.5(d) provides for the admission of evidence and exhibits, and questioning of opposing witnesses, and states that "[i]f declarations are to be used in lieu of testimony, the party

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<sup>231</sup> Exhibit X, *Desert Turf Club v. Board of Supervisors for Riverside County* (1956) 141 Cal.App.2d 446, 455. The board based its denial of land use permit for race track on testimony, letters and phone calls from members of the public opposing horse racing and betting on moral grounds. The court held that there was no evidence in the record to support the decision. On remand, the court directed the board to "reconsider the petition of appellants as to land use, wholly excluding any consideration as to the alleged immorality of horse racing and betting as authorized by state law, and wholly excluding from such consideration all testimony not received in open hearing, and all statements of alleged fact and arguments in petitions and letters on file, except the bare fact that the petitioners or letter writers approve or oppose the granting of the petition; also wholly excluding each and every instance of hearsay testimony unless supported by properly admissible testimony, it being further required that the attorneys representing any party in interest be granted a reasonable opportunity to examine or cross-examine every new witness produced." *Id.* at p. 456.

<sup>232</sup> Code of Regulations, Title 2, section 1187.5.

<sup>233</sup> Exhibit X, Government Code section 11513.

<sup>234</sup> Code of Regulations, Title 2, section 1187.5; Exhibit X, Government Code section 11513.

proposing to use the declarations shall comply with Government Code section 11514.”<sup>235</sup> Government Code section 11514, in turn, provides:

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, *shall be given the same effect as if the affiant had testified orally*. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.<sup>236</sup>

Note that the Commission’s regulations use the word “declaration,” and the Government Code refers to an “affidavit.” An affidavit, by definition, if it is to be used before a court, must “be taken before any officer authorized to administer oaths,” usually a judge.<sup>237</sup> But under the Code of Civil Procedure, section 2015.5, a declaration made *under penalty of perjury* is given the same force and effect as an affidavit sworn before an authorized officer. Such declaration must be in writing, must be “subscribed by him or her,” and must name the date and place of execution.<sup>238</sup>

Where a witness is testifying as an expert, opinion testimony is permitted where the subject is “sufficiently beyond common experience that the opinion of an expert would assist the trier of fact,” and based on matter, including the expert’s experience or training, “whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates.”<sup>239</sup> Opinion testimony is otherwise generally disfavored.<sup>240</sup> Before a court accepts expert opinion evidence, however, an expert must be qualified, pursuant to section 720 of the Evidence Code, which provides:

(a) A person is qualified to testify as an expert if he has special knowledge, skill, expertise, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

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<sup>235</sup> California Code of Regulations, Title 2, section 1187.5.

<sup>236</sup> Exhibit X, Government Code section 11514(a) (Stats. 1947, ch. 491 § 6) [emphasis supplied].

<sup>237</sup> Exhibit X, Code of Civil Procedure section 2012 (Stats. 1907, ch. 393 § 1).

<sup>238</sup> Exhibit X, Code of Civil Procedure section 2015.5 (Stats. 1980, ch. 889 § 1).

<sup>239</sup> Exhibit X, Evidence Code section 801 (Stats. 1965, ch. 299 § 2).

<sup>240</sup> Exhibit X, Evidence Code section 800 (Stats. 1965, ch. 299 § 2); California Jurisprudence 3d. Evidence, section 613.

(b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.<sup>241</sup>

The California Supreme Court has held that an expert witness is qualified “if his peculiar skill, training, or experience enable him to form opinion that would be useful to the jury.”<sup>242</sup> And in order to lay the foundation to introduce expert testimony, “[it is] the province of the court to determine, from the examination as to the witness' qualifications, whether he [is] competent to testify as an expert.”<sup>243</sup> An expert's testimony is intended to make complicated facts or information more understandable to the fact finder, and in so doing may rely on any information, including that which is not admissible in itself, but may not make legal conclusions.<sup>244</sup>

Therefore, in keeping with the applicable evidentiary standards provided by the statutes and regulations, and in an attempt to harmonize the case law with the clear import of statute and regulation, the following standards emerge: the Commission's decisions must be supported by “substantial evidence” under section 17559, but the conduct of hearings need not adhere to strict evidence rules pursuant to section 1187.5 of the Commission's regulations and Government Code section 11513(c); any relevant non-repetitive evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely; hearsay evidence may be used to supplement or explain, although it shall not be sufficient to support a finding unless admissible over objection in civil actions.<sup>245</sup> Under section 11514, as referenced in the Commission's regulations, an affidavit or declaration may be “given the same effect as if the affiant had testified orally,” if properly noticed and an opportunity to cross-examine the affiant is given.<sup>246</sup> Expert testimony, in the form of an affidavit, would be admissible if the Commission finds a witness qualified by special skill or training, and the testimony (here, declaration) is helpful to the Commission.<sup>247</sup> Furthermore, surveys of eligible claimants as a method of gathering cost data are contemplated by the statute and the regulations as a viable form of evidence, but they must be admissible under the Commission's regulations and the evidence rules, as discussed.<sup>248</sup>

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<sup>241</sup> Exhibit X, Evidence Code section 720 (Stats. 1965, ch. 299 § 2).

<sup>242</sup> Exhibit X, *People v. Davis* (1965) 62 Cal.2d 791, at p. 800.

<sup>243</sup> Exhibit X, *Bossert v. Southern Pacific Co.* (1916) 172 Cal. 504, at p. 506.

<sup>244</sup> Exhibit X, Evidence Code section 805; *WRI Opportunity Loans II LLC v. Cooper* (Cal. Ct. App. 2d Dist. 2007) 154 Cal.App.4<sup>th</sup> 525, at p. 532, Fn 3 [“Generally, Evidence Code section 805 permits expert testimony on the ultimate issue to be decided by the factfinder. However, this rule does not ... authorize ... an ‘expert’ to testify to legal conclusions in the guise of expert opinion. Such legal conclusions do not constitute substantial evidence.” (internal citations omitted)].

<sup>245</sup> California Code of Regulations, Title 2, section 1187.5.

<sup>246</sup> Exhibit X, Government Code section 11514(a) (Stats. 1947, ch. 491 § 6).

<sup>247</sup> Exhibit X, Evidence Code sections 720; 801 (Stats. 1965, ch. 299 § 2).

<sup>248</sup> Government Code section 17518.5; Code of Regulations, Title 2, section 1183.13.

**d. Substantial evidence in the record does not support the adoption of the proposed RRM in this case; the proposed RRM is not consistent with the Constitutional and statutory requirements of Commission decisions.**

The claimant has proposed standard times RRM for investigative activities performed by law enforcement, and for reporting and notice activities performed by county welfare departments, as follows:

*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].<sup>249</sup>*

The claimant has submitted the following, in support of the revised proposed parameters and guidelines:

- Exhibit 1: Declaration of Suzie Ferrell, Deputy, Field Operations Support Services, Sheriff's Department, County of Los Angeles

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<sup>249</sup> Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at pp. 23-24.

- 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<sup>250</sup>

1. The evidence in the record does not support the law enforcement standard times RRM.

Based on the record here, the Commission does not have substantial evidence upon which to base a decision to adopt the standard times RRM proposed for law enforcement.

The declarations of Suzie Ferrell and Daniel Scott state that the law enforcement surveys were developed on the basis of the investigative activities necessary to complete the ICAN mandated activities, and that the activities included in the surveys are “reasonably necessary in conducting ICAN investigations, preparing ICAN reports, and performing other ICAN required duties.”<sup>251</sup> The Ferrell declaration also states that “it is my information and belief that the average or standard time for each ICAN step...is based on a representative sample of law enforcement agencies.”

As discussed above with respect to reimbursable activities, these proposed RRM, if supported with substantial evidence, could be only partially approved, despite the assertions of Mr. Scott and Ms. Ferrell, because the activities underpinning the proposed RRM exceed the scope of the

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<sup>250</sup> These exhibits are attached to Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines.

<sup>251</sup> Exhibit B, Claimant’s Revised Proposed Parameters and Guidelines, Exhibit 1, Declaration of Suzie Ferrell, at p. 6.

mandate, and the scope of what is reimbursable under article XIII B, section 6. Notwithstanding their information and belief that the steps described in the law enforcement RRM's are necessary to complete ICAN investigations, the activities beyond investigation by patrol officers for purposes of preparing the report required by section 11169, as discussed, are not reimbursable, because those activities exceed the scope of what was approved in the test claim statement of decision; they exceed the scope of what is reasonably necessary to carry out the mandate (i.e., to determine whether a report is unfounded); and they exceed the scope of what is reimbursable under article XIII B, section 6 and Government Code section 17556.<sup>252</sup>

Along with the declarations described above, the claimant has submitted summary survey results for the law enforcement activities that the claimant seeks to include in the law enforcement RRM's. Those summary survey results describe how much time should be assigned to each step in the investigation for law enforcement agencies. As discussed above, the reimbursement of those activities must be limited, at maximum, to the degree of activity required for the propose of completion of the Form 8583. Anything more, as analyzed above, would provide reimbursement for the costs of mandated reporter activities, or a criminal investigation; and to reimburse law enforcement agencies for activities beyond those approved for county welfare departments: these are not reimbursable activities. Nowhere in the claimant's submissions are the actual raw data found, nor any spreadsheets or other summaries that detail how the standard times RRM's were calculated, so these non-reimbursable activities cannot be separated out, nor can it be determined whether there is substantial evidence to support the costs claimed. Therefore the RRM's, based upon inadmissible hearsay, are not supported by the evidence in the record and cannot be approved by the Commission, consistent with the substantial evidence standard required for Commission decisions.

Given that the Commission has no evidence other than the conclusory declarations of the claimant and the claimant's representatives and staff, the law enforcement RRM's are denied.

2. The evidence in the record does not support the county welfare department standard times RRM's.

Based on the record here, the Commission does not have substantial evidence upon which to base a decision to adopt the standard times RRM's proposed for county welfare departments.

As discussed above, some of the activities proposed for reimbursement in the county welfare departments' standard times RRM's are not adequately tied to approved reimbursable activities.

Moreover, just as with the law enforcement standard times proposed, the claimant has submitted only summary survey results for county welfare departments' activities, along with the survey questions distributed to eligible claimants.<sup>253</sup> As discussed above, the surveys were returned by eight eligible claimants, representing, according to the claimant's evidence, more than fifty percent of the state's population. But nowhere in the claimant's submissions is there any evidence of the raw data returned. Only the conclusions are stated, in the form of standard times

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<sup>252</sup> See discussion above at section (B.)(3.)(b.), p. 25 and following.

<sup>253</sup> Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 10, Child Abuse and Neglect Reporting Act Time Study Survey Questions, at pp. 2-3.

calculated by the claimant. This evidence is hearsay, and is not sufficient in itself to support the Commission's decision to approve the proposed RRM's.

Based on the foregoing, proposed RRM's for county welfare departments are denied.

**V. CONCLUSION**

For the foregoing reasons the Commission hereby adopts the attached proposed parameters and guidelines, providing for actual cost reimbursement of the activities approved in the test claim statement of decision and the reasonably necessary activities, as analyzed above.

## **DRAFT PROPOSED PARAMETERS AND GUIDELINES**

Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170 and 11174.34 (formerly 11166.9)

Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; and executive orders California Code of Regulations, title 11, section 903 (Register 98, Number 29), and “Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

### *Interagency Child Abuse and Neglect Investigation Reports* 00-TC-22

Period of reimbursement begins July 1, 1999,  
or later for specified activities added by subsequent statutes.

## **I. SUMMARY OF THE MANDATE**

This program addresses statutory amendments to California’s mandatory child abuse reporting laws commonly referred to as ICAN. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed “mandated reporters”), and in 1980, California reenacted and amended the law, entitling it the “Child Abuse and Neglect Reporting Act,” or CANRA. As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000.

The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The act provides rules and procedures for local agencies, including law enforcement, receiving such reports. The act provides for cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys’ offices. The act requires reporting to the DOJ when a report of suspected child abuse is “not unfounded.” The act requires an active investigation before a report can be forwarded to the DOJ. As of January 1, 2012, the act no longer requires law enforcement agencies to report to the DOJ, and now requires reporting only of “substantiated” reports by other agencies. The act imposes additional cross-reporting and recordkeeping duties in the event of a child’s death from abuse or neglect. The act requires agencies and the DOJ to keep records of investigations for a minimum of 10 years, and to notify suspected child abusers that they have been listed in the Child Abuse Central Index. The act

imposes certain due process protections owed to persons listed in the index, and provides certain other situations in which a person would be notified of his or her listing in the index.

On December 19, 2007, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the reimbursable activities described in section IV., as they are performed by city and county police or sheriff's departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorneys' offices, and county licensing agencies.

## **II. ELIGIBLE CLAIMANTS**

Any city, county, and city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) 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 reimbursement for the 1999-2000 fiscal year. Therefore, costs incurred on or after July 1, 1999 are reimbursable under this test claim, for statutes in effect before July 1, 1999, or later periods as specified for statutes effective after July 1, 1999.

However, Penal Code section 11169 was amended in Statutes 2011, chapter 468 (AB 717), effective January 1, 2012, to repeal the mandate for law enforcement agencies to report to DOJ, and to require that all other affected departments in the local agencies report to DOJ only "substantiated" reports of suspected child abuse, and not "inconclusive" reports. Thus, law enforcement agencies are eligible for reimbursement for the costs of completing investigations of suspected child abuse in order to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for the purpose of forwarding those reports to DOJ from July 1, 1999 until December 31, 2011, when the mandate was repealed. In addition, law enforcement agencies are eligible for reimbursement for the costs of notifying suspected abusers that they have been listed in the Child Abuse Central Index at the time that a report is submitted to DOJ from July 1, 1999 until December 31, 2011, when the mandate to forward reports to DOJ was repealed.

For all other affected departments in the local agencies, the reimbursement period for forwarding reports that are "inconclusive" to DOJ is from July 1, 1999 until December 31, 2011, due to a subsequent change in Penal Code section 11169 by Statutes 2011, chapter 468 (AB 717). On and after January 1, 2012, only forwarding reports to DOJ that are "substantiated" is reimbursable.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(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.

3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. 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(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed.

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 or time logs, sign-in sheets, invoices, and receipts.

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 salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. 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 that incurs increased costs, the following activities are reimbursable:

**A. One-Time Activities**

**1. Policies and Procedures**

City and county police or sheriff’s departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

- a. Update Departmental policies and procedures necessary to comply with the reimbursable activities identified in IV B.
- b. Develop 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].

**B. On-going Activities**

**1. Distributing the Suspected Child Abuse Report Form**

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

- a. Distribute the child abuse reporting form adopted by DOJ (currently known as the “Suspected Child Abuse Report” Form SS 8572) to mandated reporters.<sup>1</sup>

**2. Reporting Between Local Departments**

- a. Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

City and county police or sheriff’s departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments 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.<sup>2</sup>

- b. 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:

- 1) County probation departments shall:
  - i. 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

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<sup>1</sup> Penal Code section 11168, as added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916.

<sup>2</sup> Penal Code sections 11165.9 (Stats. 2000, ch. 916, § 8 (AB 1241)).

suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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.

- ii. 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 Penal Code section 11166.

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.<sup>3</sup>

2) County welfare departments shall:

- i. Report by telephone immediately, or as soon as practically possible, 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 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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.

***Reimbursement is not required for 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."***

- ii. 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 Penal Code section 11166.

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.<sup>4</sup>

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<sup>3</sup> Penal Code section 11166 (h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

<sup>4</sup> Penal Code section 11166(h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459;

c. 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:

City and county police or sheriff's departments shall:

- 1) Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions 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 section 11165.2(b), which shall be reported only to the county welfare department.<sup>5</sup>
- 2) 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 was in danger of abuse.
- 3) 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 Penal Code section 11166.

As of January 1, 2006, 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.<sup>6</sup>

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

District attorneys' offices shall:

Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2(b).<sup>7</sup>

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Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

<sup>5</sup> Penal Code section 11166(i) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (j) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (k) by Statutes 2005, chapter 42 (AB 299).

<sup>6</sup> *Ibid.*

<sup>7</sup> Penal Code section 11166 (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459;

e. Reporting to Licensing Agencies:

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

- 1) 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 licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person.
- 2) 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 Penal Code section 11166.2. The agency shall send the licensing agency a copy of its investigation report and 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.<sup>8</sup>

f. Additional Cross-Reporting in Cases of Child Death:

- 1) City and county police or sheriff's departments shall:

Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency.<sup>9</sup>

- 2) County welfare departments shall:

- i. Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.<sup>10</sup>
- ii. 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.<sup>11</sup>

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Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)).

<sup>8</sup> Penal Code section 11166.2 (Added by Stats. 1985, ch. 1598 § 4; amended by Stats. 1987, ch. 531 § 5; Stats. 1988, ch. 269 § 3; Stats. 1990, ch. 650 § 1 (AB 2423); Stats. 2000, ch. 916 § 18 (AB 1241)).

<sup>9</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>10</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>11</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313); Stats. 2010, ch. 618, § 10 (AB 2791)).

- iii. Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.<sup>12</sup>

### 3. Reporting to the State Department of Justice

- a. **From July 1, 1999 to December 31, 2011**, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:<sup>13</sup>

- 1) Complete an investigation for purposes of preparing the report

Complete an investigation to determine whether a report of suspected child abuse or severe neglect 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.<sup>14</sup> Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), and dispatching an employee to conduct initial interviews with parents, victims, suspects, or witnesses, where applicable.

***Reimbursement is not required in the following circumstances:***

- i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).
- ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).
- iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a

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<sup>12</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>13</sup> Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ *for law enforcement agencies only* ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.

<sup>14</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

detective, the conduct of follow-up interviews, and the potential making of an arrest.

2) Forward reports to the Department of Justice

Prepare and submit 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 (currently form 8583) and may be sent by fax or electronic transmission.<sup>15</sup>

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated or inconclusive to a finding of unfounded or from inconclusive or unfounded to substantiated.

***Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.***

- b. **Beginning January 1, 2012**, county welfare departments, or county probation departments where designated by the county to receive mandated reports shall:

1) Complete an investigation

Complete an investigation to determine whether a report of suspected child abuse or severe neglect 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.<sup>16</sup> Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), and dispatching an employee to conduct initial interviews with parents, victims, suspects, or witnesses, where applicable.

***Reimbursement is not required in the following circumstances:***

- i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).

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<sup>15</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

<sup>16</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

- ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).
  - iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a detective, the conduct of follow-up interviews, and the potential making of an arrest.
- 2) Forward reports to the Department of Justice

Prepare and submit 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, as defined in Penal Code section 11165.12. Unfounded or inconclusive 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.<sup>17</sup>

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated to a finding of inconclusive or unfounded, or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI.

***Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.***

#### **4. Notifications Following Reports to the Child Abuse Central Index**

- a. City and county police or sheriff’s departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:
  - 1) 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

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<sup>17</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

Department of Justice, at the time the “Child Abuse Investigation Report” is filed with the Department of Justice.<sup>18</sup>

This activity includes, where applicable, completion of the Notice of Child Abuse Central Index Listing form (SOC 832), or subsequent designated form.

***For law enforcement agencies only, this activity is eligible for reimbursement from July 1, 1999 until December 31, 2011, pursuant to Penal Code section 11169(b), as amended by Statutes 2011, chapter 468 (AB 717), which ends the mandate to report to DOJ for law enforcement agencies.***

- 2) 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.<sup>19</sup>
- 3) 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.<sup>20</sup>
- 4) 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 reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report.<sup>21</sup>

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<sup>18</sup> Penal Code section 11169(c) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

<sup>19</sup> Penal Code section 11170 (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

<sup>20</sup> Penal Code section 11170(b) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

<sup>21</sup> *Ibid.*

- b. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, county welfare departments, county licensing agencies, and district attorney offices shall:

Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.<sup>22</sup>

**Reimbursement for this activity does not include investigative activities conducted by the agency, either prior to or subsequent to receipt of the information that necessitates obtaining and reviewing the investigative report.**

- c. City and county police or sheriff's departments, county probation departments, and county welfare departments shall:

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.<sup>23</sup>

## 5. Record Retention

- a. City and county police or sheriff's departments, and county probation departments 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 eight years (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is

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<sup>22</sup> Penal Code section 11170(b)(6) (Stats. 2000, ch. 916 (AB 1241)); now subdivision (b)(10), as amended by Statutes 2012, chapter 848 (AB 1707).

<sup>23</sup> Penal Code section 11170(c) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

received within the first 10-year period, the report shall be maintained for an additional 10 years.<sup>24</sup>

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

***Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.***

b. County welfare departments shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 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.<sup>25</sup>

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

***Reimbursement is not required for the first three years of record retention required under prior law, but only for the seven years following.***

**6. Due Process Procedures Offered to Person Listed in CACI**

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

Provide due process reasonably necessary to comply with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ's Child Abuse Central Index. This activity includes a hearing before the agency that submitted the individual's name to CACI. This activity includes any due process procedures available to persons listed in the CACI prior to the enactment of Statutes 2011, chapter 468.

Reimbursement is not required for a hearing meeting the requirements of due process if a court of competent jurisdiction has determined that child abuse has occurred, or while the allegation is pending before a court.<sup>26</sup>

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<sup>24</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133(AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

<sup>25</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

<sup>26</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468 (AB 717)); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

## 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

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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, 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 2 CFR Part 225 (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 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (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 of 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 of allowable indirect costs bears to the base selected.

## VI. **RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>27</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim

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<sup>27</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 REVENUES AND REIMBURSEMENTS**

Any offsetting revenue 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(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 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(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(d), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

## Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 2/26/2013  
List Print Date: 03/08/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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Received  
March 27, 2013  
Commission on  
State Mandates

**JOHN CHIANG**  
**California State Controller**  
Division of Accounting and Reporting

Exhibit J

March 27, 2013

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

RE: Draft Staff Analysis and Proposed Parameters and Guidelines  
Interagency Child Abuse and Neglect (ICAN) Investigation Reports, 00-TC-22  
Penal Code Sections 11165.9 et al.  
County of Los Angeles, Claimant

Dear Ms. Halsey:

The State Controller's Office reviewed and recommends no changes to the proposed parameters and guidelines for Interagency Child Abuse and Neglect (ICAN) Investigation Reports.

Should you have any questions regarding the above, please contact Eduardo Antonio at (916) 323-0755 or e-mail [eantonio@sco.ca.gov](mailto:eantonio@sco.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "JAY LAL", with a long horizontal flourish extending to the right.

JAY LAL, Manager  
Local Reimbursements Section

JL/ea

MAILING ADDRESS: P.O. Box 942850, Sacramento, CA 94250  
STREET ADDRESS: 3301 C Street, Suite 700, Sacramento, CA 95816

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

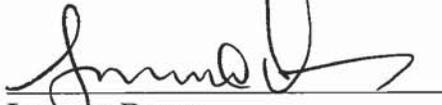
On March 29, 2013, I served the:

**SCO Comments**

*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*  
Penal Code Sections 11165. 9 et al.  
County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 29, 2013 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95814

## Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 3/28/2013  
List Print Date: 03/29/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

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Received  
April 17, 2013  
Commission on  
State Mandates

Exhibit K

April 16, 2013

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Ms. Halsey:

**REVIEW OF COMMISSION STAFF'S PARAMETERS AND GUIDELINES  
INTERAGENCY CHILD ABUSE AND NEGLECT INVESTIGATION REPORTS**

We respectfully submit our review of Commission staff's draft staff analysis and proposed parameters and guidelines (Ps&Gs) for the Interagency Child Abuse and Neglect Investigation Reports (ICAN) program.

If you have any questions, please contact Leonard Kaye at (213) 974-9653 or via e-mail at [lkaye@auditor.lacounty.gov](mailto:lkaye@auditor.lacounty.gov).

Very truly yours,

*John Naimo FOR*

Wendy L. Watanabe  
Auditor-Controller

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Enclosure

Executive Summary  
Review of Commission's Proposed Parameters and Guidelines  
Interagency Child Abuse and Neglect Investigation Reports Program

Los Angeles County (County) has reviewed the 'parameters and guidelines' (Ps&Gs) proposed by Commission on State Mandates (Commission) staff for reimbursing city and county law enforcement agencies, county welfare departments, and county probation departments for new child abuse investigation, reporting and related services.

The new Interagency Child Abuse and Neglect Investigation Reports (ICAN) program requires that every child abuse referral be evaluated, investigated, and, based on evidentiary findings, reported to the State Department of Justice (DOJ). This is a large and costly undertaking. In 2001 alone, various agencies and private individuals referred 671,422 children for child abuse evaluations, investigations and possible listing in DOJ's Child Abuse Central Index (CACI).

The County agrees with many of Commission staff's proposed reimbursements for costs incurred in providing ICAN services since July 1, 1999. However, there is substantial disagreement over the scope of reimbursable investigation services.

The County maintains that reimbursement for investigation services should use the explicit language of California law previously found by the Commissioners to impose reimbursable costs on local government. However, Commission staff do not always follow this rule.

For example, Commissioners decided that implementing the Attorney General's child abuse investigation regulations was a reimbursable activity. These regulations explicitly state that 'gathering and preserving evidence' is a necessary investigation step. However, Commission staff erroneously took out reimbursement for carrying out this step. So, the County put it back.

Also, the County revises staff's provisions which are unclear. For example, staff propose reimbursement for "dispatching" interviewers, but not for conducting interviews. So, the County added "conducting interviews".

Accordingly, the County recommends that the Commissioners adopt their staff's proposed Ps&Gs as revised by the County.

## Active Investigation

In order to file a child abuse report for inclusion in the Child Abuse Central Index (CACI), an “active investigation” of the child abuse referral must be conducted. This mandate is explicitly stated, in pertinent part, in Penal Code section 11169(a). It requires that:

“An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation ... “<sup>1</sup>  
(Emphasis added.)

The California Department of Justice (DOJ) has developed a regulation and a child abuse reporting form which specified what constitutes an “active investigation”. These specifications along with Penal Code section 11169 were found to impose reimbursable ‘costs mandated by the State’ upon local government by the Commission on December 6, 2007.

Specifically, the reimbursable “active investigation” are those stated in DOJ’s Form SS 8583 (Child Abuse Investigation Report)<sup>2</sup> and California Code of Regulations, Title 11, Section 901<sup>3</sup>.

Form SS 8583 and Section 901 both specify that:

“ ... at a minimum: assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es) when appropriate and/or available; gathering and preserving evidence; determining whether the incident is substantiated,

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<sup>1</sup> The entire Penal Code Section 11169 as added by Stats.1980, c. 1071, § 4. and amended by Stats.1981, c. 435, § 4, eff. Sept. 12, 1981; Stats.1985, c. 1598, § 8; Stats.1988, c. 269, § 4; Stats.1988, c. 1497, § 1; Stats.1997, c. 842 (S.B.644), § 5; Stats.2000, c. 916 (A.B.1241), § 27; Stats.2001, c. 133 (A.B.102), § 14, eff. July 31, 2001; Stats.2004, c. 842 (S.B.1313), § 17; Stats.2011, c. 468 (A.B.717), § 2; Stats.2012, c. 848 (A.B.1707), § 1.) is found in Exhibit 16, pages 138-147.

<sup>2</sup> A copy of DOJ’s form for child abuse investigators to complete and instructions for doing so, is in Exhibit 8.

<sup>3</sup> A copy of the California Code of Regulations, Title 11, Section 901 is in Exhibit 7.

inconclusive, or unfounded; and preparing a report that will be retained in the files of the investigating agency”.<sup>4</sup>

In addition, the “Guide to Reporting Child Abuse to the California Department of Justice” issued in 2005<sup>5</sup>, emphasizes the need to comply with Section 901’s requirements and includes Form SS 8583 which details instructions for child abuse investigators to follow in completing Form SS 8583.

Further, Sergeant Daniel Scott with the Los Angeles County Sheriff’s Department, Special Victims Bureau, declares “that the omission of one or more ICAN investigation activity 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”.

However, Commission staff recommend that the costs incurred in conducting “active investigations “ not be reimbursed to city and county law enforcement agencies, county welfare departments, and county probation departments incurring “active investigation” costs. They recommend limited reimbursement for limited investigations, rather than complete reimbursement for “active investigations”.

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<sup>4</sup> Effective January 1, 2012, Chapter 468, Statutes of 2011, Assembly Bill (AB) 717 was enacted and discontinued the requirement for law enforcement agencies to file report child abuse reports with DOJ and also discontinued reporting of inconclusive child abuse findings to DOJ by amending Penal Code section 11169(a) to state that:

“An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is substantiated, as defined in Section 11165.12”

The County’s revisions of Commission staff’s investigation reimbursement provisions for the period starting January 1, 2012 are identical to those proposed for the earlier period, except for the (above) changes in law.

<sup>5</sup> A copy of the “Guide to Reporting Child Abuse to the California Department of Justice” issued in 2005 , is in Exhibit 9.

Specifically, Commission staff's limited investigation reimbursement provision for the period July 1, 1999 to December 31, 2011, is:

“ ... city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments, for: completing an investigation for purposes of preparing the SS 8583 report to determine whether a report of suspected child abuse or severe neglect 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.<sup>6</sup> Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), and dispatching an employee to conduct initial interviews with parents, victims, suspects, or witnesses, where applicable.”

And, Commission staff's propose even further investigation reimbursement limitations:

***“Reimbursement is not required in the following circumstances:***

- i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).
- ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the “Child Abuse Investigation Report” Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential

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<sup>6</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a detective, the conduct of follow-up interviews, and the potential making of an arrest.”

Regarding the payment limitations in subsections i, ii and iii (above), the County agrees with payment exceptions to investigations services in i. and ii., but disagrees with iii. for the following reasons.

Simply put, Item iii. could be interpreted to read that the “collection of physical evidence, the referral to a detective, the conduct of follow-up interviews, and the potential making of an arrest” are reimbursable if done before the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583”. Also some agencies do not have ‘detectives’, so only agencies that do would be denied reimbursement. In addition, the phrase “potential making of an arrest” is vague. There is no explanation of the term “potential-making” and no indication as to what types of arrests disqualify reimbursement.

Therefore, the County recommends deleting the portion of exception iii. that reads “including the collection of physical evidence, the referral to a detective, the conduct of follow-up interviews, and the potential making of an arrest”. The main purpose of limiting investigation reimbursement to those investigation costs incurred before a child abuse report is filed with DOJ would still be preserved.

Therefore, the County recommends revising the reimbursement limitation in iii. as follows:

“iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal

Code section 11165.12, for purposes of preparing the Form SS 8583.”

### Reimbursable Investigation Services

Regarding Commission staff’s statement of investigation services which are reimbursable for the period July 1, 1999 to December 31, 2011, the County finds that some revision is required and recommends the following version:

“ ... city and county police or sheriff’s departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments, for: completing an investigation to determine whether a report of suspected child abuse or severe neglect 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.<sup>7</sup> Except as provided in the paragraph below, reimbursement for this activity includes but is not limited to: assessing the nature and seriousness of the known or suspected abuse, review of the initial Suspected Child Abuse Report (Form 8572); conducting interviews of the victim(s) and parent(s) and any known suspect(s) and witness(es) in their spoken language when appropriate and/or available; gathering and preserving evidence including, but not limited to, where applicable, videotaping interviews, obtaining medical exams, mental health exams, autopsies, DNA samples and polygraph tests necessary to gather and preserve evidence to determine if child abuse is unfound or if not unfound, whether child abuse is inconclusive or substantiated; and preparing a report that will be retained in the files of the investigating agency”.

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<sup>7</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

The County recommends that the Commission adopt the (above) ICAN “active investigation” reimbursement provision for following reasons.

### Preparing “Retained” Reports

The County maintains that “preparing a report that will be retained in the files of the investigating agency” is a reimbursable activity and should not be omitted from the ICAN Ps&Gs as staff propose.

The County finds that the preparation of “retained” reports is an explicit requirement in conducting “active investigations” as defined in California Code of Regulations Title 11, section 901 and in DOJ child abuse reporting form SS 8583 and attached form instructions.

Also, the preparing of “retained” reports is necessary to satisfy Commission staff’s reimbursement provision that local governmental agencies shall obtain this retained report as specified<sup>8</sup>. Further, staff do not qualify their provision to obtain “retained” reports by stating that the report shall be obtained if available. So the mandated duty to prepare a report for local government agencies to obtain is unqualified.

Therefore, preparing “retained” reports is a required reimbursement provision that should be included in the ICAN Ps&Gs adopted by the Commission.

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<sup>8</sup> Specifically, this reimbursement provision is found on page 12 of staff’s Ps&Gs and states, in pertinent part, that:

“... city and county police or sheriff’s departments, county probation departments if designated by the county to receive mandated reports, county welfare departments, county licensing agencies, and district attorney offices shall:

Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.” (Emphasis added.)

### Initial Abuse Assessment

The County finds that in addition to “review of the initial Suspected Child Abuse Report (Form 8572)” proposed by Commission staff, that “assessing the nature and seriousness of the known or suspected abuse” is an explicit requirement of Section 901, which was included in the County’s test claim legislation and found to impose reimbursable ‘costs mandated by the State’ upon local governmental agencies by the Commission.

In addition, a review of Form 8572 (the initial suspected child abuse report, or SCAR, referral to investigators) by itself may be insufficient to assess the nature and seriousness of the purported child abuse incident. Form 8572 instructs preparers to provide a narrative of the incident<sup>9</sup>, but does not state that the narrative should address the nature and seriousness of the abuse. The child abuse investigator, under section 901, is required to inquire further if the nature and seriousness of a purported child abuse incident is not apparent after reading the 8572 form ... and the costs of doing so should be reimbursable.

Therefore, the County recommends adding “assessing the nature and seriousness of the known or suspected abuse”, to the review of the 8572 form in the ICAN Ps&Gs.

### Gathering and Preserving Evidence

The County maintains that the gathering and preserving of evidence is a reimbursable activity and should not be omitted from the ICAN Ps&Gs as staff propose. The County’s reimbursement provision for this activity is for:

“gathering and preserving evidence including, but not limited to, where applicable, videotaping interviews, obtaining medical exams, mental health exams, autopsies, DNA samples and polygraph tests necessary to gather and preserve evidence to determine if child abuse is unfound or if not unfound, whether child abuse is inconclusive or substantiated”

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<sup>9</sup> Form 8572 and accompanying instructions are found in Exhibit 9, on pages 65-66.

The County maintains that the gathering and preserving of evidence is a reimbursable child abuse investigation service. The part of the County's provision that provides reimbursement for evidence of child abuse is taken verbatim from the California Code of Regulations, Title 11, section 901 --- namely "gathering and preserving evidence".

The specific evidentiary procedures, tests, and exams that are referenced in the County's evidentiary reimbursement provision are based on declarations of County staff with extensive personal knowledge of and experience in complying with ICAN's service requirements.

#### Daniel Scott's Declaration

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

He has over 32 years of law enforcement experience, including more than 25 years of service in the Los Angeles County Sheriff's Department Family Crimes Bureau as a detective and sergeant specializing in child abuse investigations.

He has conducted over 1,500 ICAN child abuse investigations and supervised over 5,000 cases with the Los Angeles County Sheriff's Department.

He has 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).

He has lectured for the California Sexual Assault Investigators Association, the American Prosecutors Research Institute, Childhelp USA, and Children's Institute International.

He has 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.

He declares that it is his information or belief that that omission of one or more ICAN investigation activity 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.

He declares that it is his information and belief that the omission of one or more ICAN investigation activities 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.

He declares that it is his information and belief that gathering and preserving evidence includes but is not limited to medical exams to determine if the child was sexually and/or physically abused, autopsies to determine if a child’s death was the result of child abuse, DNA and polygraph testing to determine if a person is a reportable suspect, and videotaping interviews for subsequent evidentiary examination.

Accordingly, Sergeant Scott provides substantial evidence supporting the County’s version of reimbursement provisions for child abuse investigations.

‘Lowest Common Denominator’ Limitation

Commission staff propose, on page 36 of their analysis, that the same child abuse investigation and reporting reimbursement provisions be applied equally to “all” entities subject to the mandate but only for what all such entities can and do perform --- in other words, only for the lowest common denominator, so to speak, of services actually provided.

The County disagrees with the ‘lowest common denominator’ limitation postulated by Commission staff, on page 36 of their analysis, as follows:

“To the extent that a mandate can be tied to or derived from CANRA, it must be limited to the investigative activities that all agencies can and do undertake. Any further investigation should not be attributed to the mandate of CANRA.” (Emphasis added.)

In other words if county welfare departments are not, for example, able to ‘gather and preserve evidence’ as part of their child abuse investigations, then law enforcement agencies will receive the same reduced reimbursement

– even if they do “gather and preserve evidence”. But the problem with this analysis is that it assumes facts not in evidence.

Commission staff as well as staff of the California Department of Social Services (SDSS) do not cite any evidence that county welfare agencies are not complying with the requirements of conducting an “active investigation”.

However, the County claims that all agencies subject to the ICAN mandates, including county welfare agencies, are complying with the ‘test claim legislation’ found to be reimbursable by the Commission and are therefore eligible to be reimbursed for their costs so incurred. Further, if specific agencies are not in compliance, agencies that are should not be penalized for the non-compliance of other agencies.

And, in some jurisdictions serious non-compliance has been noted. For example, the Solano County Grand Jury “found instances in which people who had not even been interviewed were nevertheless placed on the Registry (CACI)”<sup>10</sup>.

Regarding compliance with other investigative requirements such as the ‘gathering and preserving of evidence’, John E. Langstaff with the County’s Department of Children and Family services (DCFS), the designated county welfare agency, provides a relevant declaration.

John E. Langstaff

John E. Langstaff is a Children Services Administrator II with the Los Angeles County Department of Children and Family Services (DCFS), Business and Information Systems Division, and the Program Manager for the Electronic Suspected Child Abuse Report System (E-SCARS), which is a computerized child abuse and neglect cross report system developed in Los Angeles County as a joint DCFS-Sheriff’s Department-District Attorney project. E-SCARS links all 46 law enforcement agencies and the District Attorney in a single computerized cross report system.

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<sup>10</sup> See page 130 in Exhibit 15 in the article “The Child Abuse Registry – Part II – Victory in California”, for further discussion of CACI listing issues.

Mr. Langstaff has a Master of Science degree in psychology, and has worked for DCFS for 25 years, six months. He was a line Emergency Response Children's Social Worker (CSW) for nine years, investigating allegations of child abuse and neglect. He worked in policy, DCFS administration, at the Inter-Agency Council on Child Abuse and Neglect (ICAN), managed ICAN's National Center on Child Fatality Review (NCFR), and at DCFS training in my 25+ years with DCFS and has been the E-SCARS Manager at the DCFS Business and Information Systems Division since December of 2008.

Mr. Langstaff has made numerous public presentations regarding child abuse and neglect reporting and assessment on behalf of DCFS, have been a presenter on "Use of Technology in Child Abuse Investigation, Assessment and Prosecution" at ICAN's annual Nexus Conference (2010), is the current Chair of the ICAN Data Sharing Committee, and further, he was awarded the County Superstar Award for his work as the E-SCARS manager.

Mr. Langstaff has been the Project and Program Manager of the E-SCARS project during its major development, its production implementation countywide, during subsequent enhancements, and he continues to be the Program Manager. In his role as co-lead on the E-SCARS Steering Committee, he arranges and leads annual all-departments E-SCARS law enforcement meetings, and provide training and other assistance as needed.

Mr. Langstaff declares 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."

Mr. Langstaff declares that the omission of one or more ICAN investigation activity 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.

Mr. Langstaff declares that the omission of one or more ICAN investigation activities 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.

Mr. Langstaff declares that the processing of gathered evidence includes but is not limited to medical exams to determine if the child was sexually and/or physically abused, as well as the costs of autopsies to determine if a child's death was the result of child abuse.

Mr. Langstaff declares that the Los Angeles County Department of Children and Family Services (DCFS) routinely gathers, preserves and evaluates forensic evidence from medical and other tests and examinations required to complete mandated fields in DOJ's Form SS 8583, as revised in June 2005. Mr. Langstaff further supports his declaration with a copy of DCFS's child abuse forensic examination Bulletin, Issue 06-15, published on February 21, 2006, found on pages 14-17 in Exhibit 4.

Mr. Langstaff declares that he believes that DCFS costs of forensic child abuse tests and exams are necessary to complete the mandated fields in DOJ's Form SS 8583, as revised in June 2005, and are therefore reimbursable.

In addition to the child abuse forensic examination bulletin, Issue 06-15, provided by Mr. Langstaff, excerpts from the "California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims", issued by the Governor's Office of Emergency Services. is provided in Exhibit 10. These excerpts, on pages 86-92 present important considerations in the collection and preservation of evidence for child abuse investigators irrespective of their affiliation with law enforcement or child welfare agencies.

Accordingly, law enforcement and child welfare agencies can and do undertake the collection and preservation of evidence in conducting required child abuse investigations ... and, as noted by Jill Kanemasu, with the State Controller's Office (SCO), these evidentiary activities are reimbursable.

State Controllers Office

On April 1, 2010, Ms. Jill Kanemasu, SCO's Chief of the Bureau of Payments, filed "comments and recommendations" on the County's ICAN Ps&Gs <sup>11</sup>. Ms. Kanemasu recommended, on the third page of her filing, that reimbursable activities should include those to:

"... gather and evaluate evidence when reasonably necessary to make evidentiary findings on suspects and victims. Victim costs include medical exams for sexual assault and/or physical abuse, mental health exams, and autopsies. Suspects 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."

It should be noted that Ms. Kanemasu's findings (above) do not differentiate child abuse investigation services conducted by law enforcement agencies from those performed by county welfare agencies. Both are the same ... and both are eligible to receive the same reimbursements for the costs incurred as specified by Ms. Kanemasu.

The County agreed with Ms. Kanemasu's findings and incorporated them in the County's "Review of State Agency Comments and Revised Parameters and Guidelines" filed with the Commission on May 10, 2010.

Accordingly, for all of the above reasons, the County finds that reimbursement for conducting "active investigations" of child abuse referrals is required as claimed herein and as included in County's revision of Commission staff's proposed Ps&Gs.

#### Due Process

The County agrees with Commission staff's proposed reimbursement provision for costs incurred in performing due process hearings. This reimbursement provision is found on page 13 of Commission staff's proposed Ps&Gs and provides reimbursement for:

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<sup>11</sup> A copy of Ms. Kanemasu's filing is found in Exhibit 12, pages 106-111.

“City and county police or sheriff’s departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Provide due process reasonably necessary to comply with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ’s Child Abuse Central Index. This activity includes a hearing before the agency that submitted the individual’s name to CACI. This activity includes any due process procedures available to persons listed in the CACI prior to the enactment of Statutes 2011, chapter 468.

Reimbursement is not required for a hearing meeting the requirements of due process if a court of competent jurisdiction has determined that child abuse has occurred, or while the allegation is pending before a court.<sup>12</sup>”

The County includes the declaration of Francesca LeRue, the Due Process Coordinator for DCFS in Exhibit 5 and the declaration of Carlos Marquez, the Due Process Coordinator for the County’s Sheriff Department in Exhibit 3.

#### Carlos Marquez’s Declaration

Lieutenant Carlos Marquez, Due Process Hearing Coordinator, in the Special Victims Bureau (SVB) of the County Sheriff’s department declares that it is his information and belief that the costs of establishing and maintaining the Sheriff’s due process procedures under SVB Bureau Order #0023 (Child Abuse Central Index Process) and related procedures (found in Exhibit 3, pages 7-9) are reasonably necessary in complying with federal due process procedural protections under the 14<sup>th</sup> Amendment that must be afforded to individuals reported to DOJ’s Child abuse Central Index.

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<sup>12</sup> “Authority: 26 (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468 (AB 717)); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.”

Francesca LeRue

Francesca LeRue, is acting Division Chief of the Risk management Division of DCFS and Due Process Coordinator for hearing requests of those persons who maintain that DCFS erroneously reported them to DOJ for inclusion in the CACI.

Ms. LeRue declares that it is her information and belief that the costs of due process procedures established and maintained by DCFS, which are detailed in her attached DCFS Procedural Guide 0070-548.18; found in Exhibit 5, pages 21-37, are reimbursable because the activities detailed in the DCFS Guide are reasonably necessary in complying with federal due process procedural protections under the 14<sup>th</sup> Amendment that must be afforded to individuals to the DOJ's CACI.

Ms. LeRue further declares, on page 20 of Exhibit 5, that Form SOC 834 (attached to her declaration in Exhibit 5 on page 37) was developed by the State of California Health and Human Services Agency so that it could be used by persons who wish to request a grievance review hearing to challenge their referral to the CACI. Section C provides space for the aggrieved party's attorney or representative to list his or her name, address and telephone number. This further illustrates that the State allows aggrieved parties to bring attorneys to the grievance review hearing, thereby necessitating involvement by lawyers representing the County.

Accordingly, in addition to the due process reimbursements proposed by staff, the County adds the reasonably necessary activity of lawyers representing city and county law enforcement agencies, county welfare departments, and county probation departments in due process hearings of aggrieved persons when accompanied by their attorney. The additional due process reimbursement provision recommended by the County is:

In due process hearings where the aggrieved person is accompanied by an attorney, the costs of legal representation for the city and county law enforcement agencies, county welfare departments, and county probation departments are reimbursable.

Computer and Software Costs

The County maintains that reimbursement for computer and software costs necessary to implement ICAN's complex cross-reporting requirements is required. Commission staff disagree. Therefore, the County provides further evidence as to why computerization is required and does so in the declaration of John E, Langstaff, attached as Exhibit 4, on pages 10-17.

John E. Langstaff is a Children Services Administrator II with the Los Angeles County Department of Children and Family Services (DCFS), Business and Information Systems Division, and the Program Manager for the Electronic Suspected Child Abuse Report System (E-SCARS), which is a computerized child abuse and neglect cross report system developed in Los Angeles County as a joint DCFS-Sheriff's Department-District Attorney project. E-SCARS links all 46 law enforcement agencies and the District Attorney in a single computerized cross report system.

Mr. Langstaff declares that he has been the Project and Program Manager of the E-SCARS project during its major development, its production implementation countywide, during subsequent enhancements, and that I continue to be the Program Manager. In his role as co-lead an E-SCARS Steering Committee, he arranges and leads annual all-departments E-SCARS law enforcement meetings, and provide training and other assistance as needed.

Mr. Langstaff declares that he has reviewed reimbursement provisions in the Commission on State Mandates (Commission) staff analysis and proposed Ps&Gs for the ICAN program and notes that on pages 25-27 Commission staff deny reimbursement "... to periodically develop, update or obtain computer software and obtain computer equipment necessary for ICAN cross-reporting ...".

Mr. Langstaff declares that it is his information and belief that ICAN cross-reporting allows written reports transmission by "fax or electronic transmission" and that electronic transmission includes transmission using computers and specialized software.

Mr. Langstaff declares that it is his information and belief that electronic transmission using computers and specialized software is encompassed by the "electronic transmission" option and are in our jurisdiction a more

reliable method of cross-reporting than the one relying entirely on fax machines for the following reasons:

1. Fax machines must constantly be checked to ensure that sufficient paper is available and not jammed unlike computerized systems.
2. Fax machines require staff to receive and distribute hard copies of written reports who are not at their workplace 24 hours a day, assigned day, 7 days a week (24/7) while computerized systems are available 24/7.
3. Agencies (and there are 46 law enforcement agencies in our county) may change their fax numbers and the agency must communicate such changes to the Child Protection Hotline to ensure proper transmission and receipt of the fax.
4. The E-SCARS system, using computers, also has a database to track or produce reports regarding transmission, receipt of the SCAR, agency personnel assigned to investigate, agency findings, comments, report numbers, assigned District Attorney staff and court case numbers, assigned DCF by user social workers, a tracked log of all activities by user on the system, and many more features. These features are not available via fax based cross report systems, and each feature of the E-SCARS computer based system collectively helps to assure as close to 100% compliance with the cross reporting statute as is possible.

Therefore, Mr. Langstaff declares that it is his belief that ICAN cross-reporting reimbursements should include those for computer referrals and reports in a timely, reliable, and cost-efficient manner.

Accordingly, the County proposes that its original Ps&Gs reimbursement provision be reinstated in the Ps&Gs revised for Commission approval. Namely that reimbursement be provided to:

“To periodically develop, update or obtain computer software and obtain computer equipment necessary for ICAN cross-reporting.”

#### Training

The County recommends the following reimbursement for training:

One-time per employee, train ICAN staff in State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate participants and instructors for their time in participating in a training session and to provide necessary facilities, training materials and audio visual presentations.

Evidence for the necessity of providing the above training is provided in the declaration of Sergeant Daniel Scott found in Exhibit 1, pages 1-2. Sergeant Scott has 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 and declares that it is his information and belief that: .

1. Specialized training is necessary to ensure that ICAN's comprehensive child abuse referral assessments, investigations and reports are completed in a timely manner and in accordance with DOJ's requirements.
2. Specialized ICAN training be performed annually, so that new ICAN staff can be promptly trained and deployed.

In addition, On April 1, 2010, Ms. Jill Kanemasu, SCO's Chief of the Bureau of Payments, filed "comments and recommendations" on the County's ICAN Ps&Gs <sup>13</sup>. Ms. Kanemasu recommended, on the third page of her filing, on page 108 in Exhibit 12, that one-time reimbursable activities include training as follows: :

"Develop and train ICAN staff in State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors for their time in participating in training sessions and to provide necessary facilities, training materials and audio visual presentations. (One time per employee)"

The County has modified Kanemasu training reimbursement recommendation to permit reimbursement for participants as well as instructors, as participants are reasonably necessary for training to occur... indeed, absolutely essential. Therefore, the County recommends the following reimbursement for training:

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<sup>13</sup> A copy of Ms. Kanemasu's filing is found in Exhibit 12, pages 106-111.

One-time per employee, train ICAN staff in State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate participants and instructors for their time in participating in a training session and to provide necessary facilities, training materials and audio visual presentations.

#### Reasonable Reimbursement Methodology (RRM)

Finally, it should be noted that the County had planned on developing an RRM before now to simplify the claiming process. However, on November 12, 2009, the process was interrupted to allow the Commission to determine which activities in the RRM surveys used at the time conformed to those found to be reimbursable by the Commission<sup>14</sup>. Subsequently, State agencies filed comments on the County's revised ICAN Ps&Gs. And, the County, on May 18, 2010, once again revised its Ps&Gs in light of those comments<sup>15</sup>.

It should be noted that the County's May 18, 2010 ICAN Ps&Gs filing included 3 levels of reimbursable law enforcement activities, not the five levels studied by Commission staff. Perhaps this filing was overlooked by staff. But if so, it is harmless error as the mission was to obtain a ruling from the Commission on what was reimbursable and, consequently, determine what can be surveyed.

Therefore, the County awaits Commissioner's imminent decision on the scope of reimbursable ICAN activities so that work on the RRM surveys can be completed. If the RRM is promptly completed after the Commissioners' decision, local governmental agencies providing ICAN services can finally be reimbursed for the substantial child abuse investigation and reporting costs they have incurred since July 1, 1999.

The County's revision of "Section IV REIMBURSABLE ACTIVITIES" of the ICAN Ps&Gs proposed by Commission staff is found on the following pages.

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<sup>14</sup> See Commission's letter to County's representative in Exhibit 11, page 105.

<sup>15</sup> See excerpts of County's May 18, 2010 filing in Exhibit 13, pages 112-122.

Parameters and Guidelines Recommendations  
Interagency Child Abuse and Neglect Investigations Reports

Los Angeles County recommends that the following (highlighted) changes be made to Section IV. REIMBURSABLE ACTIVITIES of the parameters and guidelines (Ps&Gs) proposed by Commission staff for the Interagency Child Abuse and Neglect Investigation Reports (ICAN) reimbursement program:

**IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed.

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 or time logs, sign-in sheets, invoices, and receipts.

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 salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. 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 that incurs increased costs, the following activities are reimbursable:

**A. Periodic ~~One-Time~~ Activities**

**~~1. Policies and Procedures~~**

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

- a. Update Departmental policies and procedures necessary to comply with the reimbursable activities identified in IV B.
- b. Develop 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].
- c. One-time per employee, train ICAN staff in State Department of Justice (DOJ) ICAN requirements . Reimbursable specialized ICAN training costs include those incurred to compensate participants and instructors for their time in participating in a training session and to provide necessary facilities, training materials and audio visual presentations.
- d. Develop or procure computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ. Reimbursable costs must be pro-rated to those costs incurred in performing mandated activities.

**B. On-going Activities**

**1. Distributing the Suspected Child Abuse Report Form**

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

- a. Distribute the child abuse reporting form adopted by DOJ (currently known as the “Suspected Child Abuse Report” Form SS 8572) to mandated reporters.<sup>16</sup>

## 2. Reporting Between Local Departments

- a. Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

City and county police or sheriff’s departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments 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.<sup>17</sup>

Reimbursement includes but is not limited to the continuing costs of developing or procuring computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ. Reimbursable costs must be pro rated to those costs incurred in performing mandated activities.

- b. 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:

1) County probation departments shall:

- i. 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

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<sup>16</sup> Penal Code section 11168, as added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916.

<sup>17</sup> Penal Code sections 11165.9 (Stats. 2000, ch. 916, § 8 (AB 1241)).

Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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.

- ii. 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 Penal Code section 11166.

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.<sup>18</sup>

Reimbursement includes but is not limited to the continuing costs of developing or procuring computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ. Reimbursable costs must be pro rated to those costs incurred in performing mandated activities.

2) County welfare departments shall:

- i. Report by telephone immediately, or as soon as practically possible, 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

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<sup>18</sup> Penal Code section 11166 (h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

<sup>4</sup> Penal Code section 11166(h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459;

known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates 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.

***Reimbursement is not required for 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."***

- ii. 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 Penal Code section 11166.

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.<sup>19</sup>

Reimbursement includes but is not limited to the continuing costs of developing or procuring computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ. Reimbursable costs must be pro rated to those costs incurred in performing mandated activities.

c. 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:

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<sup>19</sup> Penal Code section 11166(h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

City and county police or sheriff's departments shall:

- 1) Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions 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 section 11165.2(b), which shall be reported only to the county welfare department.<sup>20</sup>
- 2) 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 was in danger of abuse.
- 3) 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 Penal Code section 11166.

As of January 1, 2006, 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.<sup>21</sup>

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<sup>20</sup> Penal Code section 11166(i) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (j) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (k) by Statutes 2005, chapter 42 (AB 299).

<sup>21</sup> *Ibid.*

<sup>7</sup> Penal Code section 11166 (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)).

Reimbursement includes but is not limited to the continuing costs of developing or procuring computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ. Reimbursable costs must be pro rated to those costs incurred in performing mandated activities.

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

District attorneys' offices shall:

Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2(b).<sup>22</sup>

e. Reporting to Licensing Agencies:

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

- 1) 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 licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person.
- 2) 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 Penal Code section 11166.2. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

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<sup>22</sup> Penal Code section 11166.2 (Added by Stats. 1985, ch. 1598 § 4; amended by Stats. 1987, ch. 531 § 5; Stats. 1988, ch. 269 § 3; Stats. 1990, ch. 650 § 1 (AB 2423); Stats. 2000, ch. 916 § 18 (AB 1241)).

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.<sup>23</sup>

Reimbursement includes but is not limited to the continuing costs of developing or procuring computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ. Reimbursable costs must be pro rated to those costs incurred in performing mandated activities.

f. Additional Cross-Reporting in Cases of Child Death:

1) City and county police or sheriff's departments shall:

Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency.<sup>24</sup>

2) County welfare departments shall:

i. Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.<sup>25</sup>

ii. 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.<sup>26</sup>

iii. Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.<sup>27</sup>

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<sup>23</sup> Penal Code section 11166.2 (Added by Stats. 1985, ch. 1598 § 4; amended by Stats. 1987, ch. 531 § 5; Stats. 1988, ch. 269 § 3; Stats. 1990, ch. 650 § 1 (AB 2423); Stats. 2000, ch. 916 § 18 (AB 1241)).

<sup>24</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>25</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>26</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313); Stats. 2010, ch. 618, § 10 (AB 2791)).

### 3. Reporting to the State Department of Justice

a. From July 1, 1999 to December 31, 2011, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:<sup>28</sup>

1) Complete an investigation for purposes of preparing the report

Complete an investigation to determine whether a report of suspected child abuse or severe neglect 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.<sup>29</sup> Except as provided in the paragraph below, reimbursement for this activity includes but is not limited to: assessing the nature and seriousness of the known or suspected abuse, review of the initial Suspected Child Abuse Report (Form 8572); conducting interviews of the victim(s) and parent(s) and any known suspect(s) and witness(es) in their spoken language when appropriate and/or available; gathering and preserving evidence including, but not limited to, where applicable, videotaping interviews, obtaining medical exams, mental health exams, autopsies, DNA samples and polygraph tests necessary to gather and preserve evidence to determine if child abuse is unfound or if not unfound, whether child abuse is inconclusive or substantiated; and preparing a report that will be retained in the files of the investigating agency".

***Reimbursement is not required in the following circumstances:***

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<sup>27</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>28</sup> Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ *for law enforcement agencies only* ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.

<sup>29</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).

ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the “Child Abuse Investigation Report” Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

iii Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583. ~~including the referral to a detective, the conduct of follow-up interviews, and the potential making of an arrest.~~

2) Forward reports to the Department of Justice

Prepare and submit 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 (currently form 8583) and may be sent by fax or electronic transmission.<sup>30</sup>

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<sup>30</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated or inconclusive to a finding of unfounded or from inconclusive or unfounded to substantiated.

*Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.*

b. **Beginning January 1, 2012**, county welfare departments, or county probation departments where designated by the county to receive mandated reports shall:

1) Complete an investigation

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, or 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.<sup>31</sup> Except as provided in paragraph below, reimbursement for this activity includes but is not limited to: assessing the nature and seriousness of the known or suspected abuse, review of the initial Suspected Child Abuse Report (Form 8572); conducting interviews of the victim(s) and parent(s) and any known suspect(s) and witness(es) in their spoken language when appropriate and/or available; gathering and preserving evidence including, but not limited to, where applicable, videotaping interviews, obtaining medical exams, mental health exams, autopsies, DNA samples and polygraph tests necessary to gather and preserve evidence to determine if child abuse is unfound or if not unfound, whether child abuse is inconclusive or substantiated; and preparing a report that will be retained in the files of the investigating agency".

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<sup>31</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

***Reimbursement is not required in the following circumstances:***

i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).

ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, ~~including the referral to a detective, the conduct of follow-up interviews, and the potential making of an arrest.~~

**2) Forward reports to the Department of Justice**

Prepare and submit 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, as defined in Penal Code section 11165.12. Unfounded or inconclusive 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.<sup>32</sup>

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<sup>32</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated to a finding of inconclusive or unfounded, or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI.

*Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.*

#### **4. Notifications Following Reports to the Child Abuse Central Index**

a. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

1) 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.<sup>33</sup>

This activity includes, where applicable, completion of the Notice of Child Abuse Central Index Listing form (SOC 832), or subsequent designated form and where applicable sending the person listed in CACI with a "Request for Grievance Hearing" form (SOC 834).

*For law enforcement agencies only, this activity is eligible for reimbursement from July 1, 1999 until December 31, 2011, pursuant to Penal Code section 11169(b), as amended by Statutes 2011, chapter 468 (AB 717), which ends the mandate to report to DOJ for law enforcement agencies.*

2) 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

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<sup>33</sup> Penal Code section 11169(c) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

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.<sup>34</sup>

3) 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.<sup>35</sup>

4) 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 reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report.<sup>36</sup>

b. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, county welfare departments, county licensing agencies, and district attorney offices shall:

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<sup>34</sup> Penal Code section 11170 (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

<sup>35</sup> Penal Code section 11170(b) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

<sup>36</sup> *Ibid.*

Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.<sup>37</sup>

**Reimbursement for this activity does not include investigative activities conducted by the agency, either prior to or subsequent to receipt of the information that necessitates obtaining and reviewing the investigative report.**

c. City and county police or sheriff's departments, county probation departments, and county welfare departments shall:

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.<sup>38</sup>

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<sup>37</sup> Penal Code section 11170(b)(6) (Stats. 2000, ch. 916 (AB 1241)); now subdivision (b)(10), as amended by Statutes 2012, chapter 848 (AB 1707).

<sup>38</sup> Penal Code section 11170(c) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB

## 5. Record Retention

a. City and county police or sheriff's departments, and county probation departments 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 eight years (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 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.<sup>39</sup>

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

*Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.*

b. County welfare departments shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 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.<sup>40</sup>

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated

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644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

<sup>39</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

<sup>40</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

*Reimbursement is not required for the first three years of record retention required under prior law, but only for the seven years following.*

#### **6. Due Process Procedures Offered to Person Listed in CACI**

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

Provide due process reasonably necessary to comply with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ's Child Abuse Central Index. This reimbursable activity includes a hearing before the agency that submitted the individual's name to CACI and where applicable, reviewing the filed "Request for Grievance Hearing" form (SOC 834) and pertinent investigative files and where the aggrieved person is accompanied by an attorney, the costs of legal representation for the city and county law enforcement agencies, county welfare departments, and county probation departments are reimbursable.

This activity includes any due process procedures available to persons listed in the CACI prior to the enactment of Statutes 2011, chapter 468.

Reimbursement is not required for a hearing meeting the requirements of due process if a court of competent jurisdiction has determined that child abuse has occurred, or while the allegation is pending before a court.<sup>41</sup>

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<sup>41</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468 (AB 717)); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

**REVIEW OF COMMISSION STAFF'S PARAMETERS AND GUIDELINES  
INTERAGENCY CHILD ABUSE AND NEGLECT INVESTIGATION REPORTS**

**TABLE OF EXHIBITS**

**Volume One**

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# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT



## Review of Commission's Proposed Parameters and Guidelines Interagency Child Abuse and Neglect Investigation Reports Program

### 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, 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 32 years of law enforcement experience, including more than 25 years of service in the Los Angeles County Sheriff's Department Special Victims Bureau as a detective and sergeant specializing in child abuse investigations.

I declare that I have conducted over 1,500 ICAN child abuse investigations and supervised over 5000 cases with the Los Angeles County Sheriff's Department.

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 lectured for the California Sexual Assault Investigators Association, the American Prosecutors Research Institute, Childhelp USA, USC's Delinquency Control Institute, California Sexual Assault Investigators Association (CSAIA), The Chicago School of Professional Psychology and Children's Institute International.

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 it is my information and belief that specialized training is necessary to ensure that ICAN's comprehensive child abuse referral assessments, investigations

and reports are completed in a timely manner and in accordance with DOJ's -2- requirements.

I declare that it is my information and belief that specialized ICAN training be performed annually, so that new ICAN staff can be promptly trained and deployed.

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 investigation activity 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.

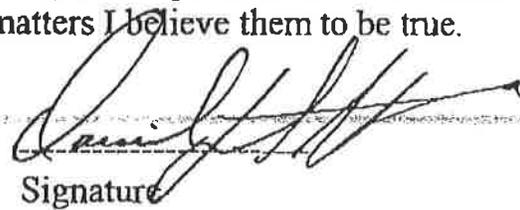
I declare that it is my information and belief that the omission of one or more ICAN investigation activities could result in a finding of insufficient evidence of abuse and that further investigation could provide sufficient evidence, thereby avoid listing an innocent person as a 'suspect' in the CACI.

I declare that it is my information and belief that gathering and preserving evidence includes, but is not limited to medical exams to determine if the child was sexually and/or physically abused, autopsies to determine if a child's death was the result of child abuse, DNA and polygraph testing to determine if a person is a reportable suspect, and videotaping interviews for subsequent evidentiary examination.

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.

April 4, 2013, Whittier, CA  
Date and Place Los Angeles County

  
Signature



# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT



## Review of Commission's Proposed Parameters and Guidelines Interagency Child Abuse and Neglect Investigation Reports (ICAN) Program

### **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 reimbursement provisions in the Commission on State Mandates (Commission) staff proposed ICAN parameters and guidelines (Ps&Gs) issued on March 12, 2013.

I declare that I have revised unclear language in Commission staff's ICAN Ps&Gs and have incorporated my recommended language changes in their Ps&Gs Section IV. REIMBURSABLE ACTIVITIES.

For example, I declare that Commission staff propose a reimbursable activity of "dispatching an employee to conduct initial interviews with parents, victims, suspects, or witnesses".

I declare that it is my information and belief that Commission's staff interview reimbursement provision is misleading as it may be construed that only the dispatching activity is reimbursable.

I declare that it is my information and belief that reimbursement for interviews should be clearly and concisely stated as reimbursement for "interviews of parents, victims, suspects, or witnesses"

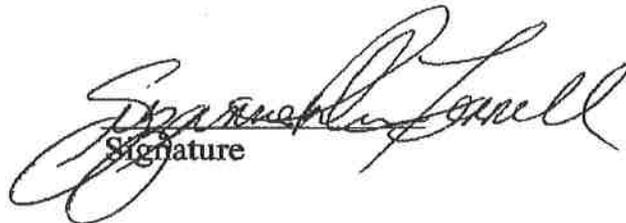
I declare that it is my information and belief that the ICAN Ps&Gs should include reimbursement for reasonably necessary and reimbursable activities omitted in staff's ICAN Ps&Gs.

For example, it is my information and belief that it is reasonably necessary for the interviewer to speak the language of the interview(es), so reimbursement is required for "interviews of parents, victims, suspects, or witnesses in their spoken language".

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.

4/4/13 Commerce, CA  
Date and Place

  
Signature



# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT



## Review of Commission's Proposed Parameters and Guidelines Interagency Child Abuse and Neglect Investigation Reports (ICAN) Program

### Declaration of Carlos Marquez

Carlos Marquez makes the following declaration and statement under oath:

I, Carlos Marquez, a Lieutenant with the Los Angeles County Sheriff's Department, am the coordinator for due process hearings requested by those persons who maintain that the Sheriff's Department erroneously reported them to the State Department of Justice (DOJ) for inclusion in the Central Child Abuse Index (CACI).

I have read the portion of the Commission on State Mandates (Commission) proposed parameters and guidelines (Ps&Gs) which states, on page 13, that due process procedures are necessary and that their costs are reimbursable as follows:

“City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Provide due process reasonably necessary to comply with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ's Child Abuse Central Index. This activity includes a hearing before the agency that submitted the individual's name to CACI. This activity includes any due process procedures available to persons listed in the CACI prior to the enactment of Statutes 2011, chapter 468.

Reimbursement is not required for a hearing meeting the requirements of due process if a court of competent jurisdiction has determined that child abuse has occurred, or while the allegation is pending before a court.

Authority: 26 (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468 (AB 717)); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.”

I declare that it is my information and belief that the costs of due process procedures established and maintained by the Sheriff's Department, which are detailed in the attached Child Abuse Central Index Process, SVB Bureau Order #0023, reimbursable as the activities detailed in the attached Sheriff's procedures are reasonably necessary in complying with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ's Child Abuse Central Index.

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 matters which are stated as information and belief, and as to those matters I believe them to be true.

4-4-13 Whittier, CA.  
L.A. County  
Date and Place

  
Signature

LOS ANGELES COUNTY SHERIFF-S DEPARTMENT  
DETECTIVE DIVISION

SPECIAL VICTIMS BUREAU



<b>Bureau Order No:</b>	0023
<b>Subject:</b>	CHILD ABUSE CENTRAL INDEX PROCESS

<b>Effective Date</b>	April 2007	<b>Last Date Reviewed</b>	Mar 2013	<b>Last Date Revised</b>	Mar 2013
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**PURPOSE:**

To ensure that the mandated processing and handling of all documentation between Special Victims Bureau (SVB), California Department of Justice (CA DOJ), and concerned parties, are performed appropriately as to the placement of individuals in the Child Abuse Central Index (CACI). It further ensures that the review process and hearing requests are conducted according to current California statute.

**POLICY :**

A. At the conclusion and inactivation of an investigation conducted by a detective of Special Victims Bureau, he/she shall complete the Child Abuse or Severe Neglect Indexing Form BCIA 8583 (Attachment # 1) when applicable. On form BCIA 8583, the classification of Substantiated (Penal Code section 11165.12 b), or Inconclusive (Penal Code section 11165.12 c) shall be appropriately marked by the detective based on all the facts and evidence obtained at the time the case is closed.

B. A professional staff member of Special Victims Bureau shall submit the Child Abuse or Severe Neglect Indexing Form (BCIA 8583) to the CA DOJ for appropriate processing. Under current California statute the following applies:

A suspect listed in the category of Substantiated is entered into the Child Abuse Central Index (CACI) permanently.

A suspect listed in the category of Inconclusive is entered into CACI for

Pursuant to Penal Code section 11169(b), a notification letter to the concerned individual shall be sent to him/her informing him/her that he/she has been reported to the CA DOJ to be placed in the CACI, (Attachment # 2).

- a. The notification letter informs the individual about their right to request a review of the case, their right to receive redacted reports, and their right to provide any documentation that they feel should be included in the review process, if they believe the classification should be unfounded.
  - b. If the individual is under the age of 18, the letter is addressed to the parent or legal guardian of the subject and they are to inform the subject of the contents of the letter.
  - c. The notification letter instructs the individual to address their request for review to the operations lieutenant. The individual making the request for review of his/her case can make this request at anytime.
- C. When an individual makes a request to have their name removed from the CACI and/or requests a copy of redacted reports from their case file, the following shall occur:
- a. A copy of the redacted reports will be sent to that individual, upon verification of his/her identity, no later than **10** business days of receipt of their letter.
- D. The operations lieutenant shall conduct a complete and thorough review of all materials of the case within **45 days** of receipt of the written request.
- E. The operations lieutenant shall submit the file with his/her findings and recommendations to the unit commander for approval. After a complete and thorough review of the file, if the unit commander concurs with the findings and recommendations of the operations lieutenant, he will approve the case file. A letter as to the findings will be sent to the concerned individual (Attachment # 3). The letter shall be issued to the individual no later than **five (5)** days of the review by the unit commander.

If the unit commander does not concur with the findings and recommendations of the operations lieutenant, they will discuss the case in detail in order to finalize the findings and recommendations.

- I. Pursuant to Penal Code section 11169c and 11170a, SVB will retain all investigative reports that result in a report filed with the CA DOJ for the same period of time that the information is required to be maintained in the CACI. The CACI case file will be retained for the same period of time.

Attachments  
California Department of Justice form BCIA 8583  
Notification Letter  
CACI Review Letter

Reviewed and approved by:

\_\_\_\_\_  
Robert C. Esson, Captain  
Special Victims Bureau

\_\_\_\_\_  
Date



County of Los Angeles  
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

425 Shatto Place, Los Angeles, California 90020  
(213) 351-5602

PHILIP L. BROWNING  
Director

Board of Supervisors  
GLORIA MOLINA  
First District  
MARK RIDLEY-THOMAS  
Second District  
ZEV YAROSLAVSKY  
Third District  
DON KNABE  
Fourth District  
MICHAEL D. ANTONOVICH  
Fifth District

Review of Commission’s Proposed Parameters and Guideline  
Interagency Child Abuse and Neglect Investigation Reports Prog

**Declaration of John E. Langstaff**

John E. Langstaff makes the following declaration and statement under oath:

I, John E. Langstaff, a Children Services Administrator II with the Los Angeles County Department of Children and Family Services (DCFS), Business and Information Systems Division, am the Program Manager for the Electronic Suspected Child Abuse Report System (E-SCARS), which is a computerized child abuse and neglect cross report system developed in Los Angeles County as a joint DCFS-Sheriff’s Department-District Attorney project. E-SCARS links all 46 law enforcement agencies and the District Attorney in a single computerized cross report system.

I declare that I have a Master of Science degree in psychology, and have worked for DCFS for 25 years, six months. I was a line Emergency Response Children’s Social Worker (CSW) for nine years, investigating allegations of child abuse and neglect. I have worked in policy, DCFS administration, at the Inter-Agency Council on Child Abuse and Neglect (ICAN), managed ICAN’s National Center on Child Fatality Review (NCFR), and at DCFS training in my 25+ years with DCFS and have been the E-SCARS Manager at the DCFS Business and Information Systems Division since December of 2008.

I declare that I have made numerous public presentations regarding child abuse and neglect reporting and assessment on behalf of DCFS, have been a presenter on “Use of Technology in Child Abuse Investigation, Assessment and Prosecution” at ICAN’s annual Nexus Conference (2010), am the current Chair of the ICAN Data Sharing Committee, and further that I was awarded the County Superstar Award for my work as the E-SCARS manager.

I declare that I have been the Project and Program Manager of the E-SCARS project during its major development, its production implementation countywide, during subsequent enhancements, and that I continue to be the Program Manager. In my role I

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co-lead an E-SCARS Steering Committee, I arrange and lead annual all-departments E-11-SCARS law enforcement meetings, and provide training and other assistance as needed.

I declare that I have reviewed reimbursement provisions in the Commission on State Mandates (Commission) staff analysis and proposed Ps&Gs for the ICAN program and note that on pages 25-27 Commission staff deny reimbursement "... to periodically develop, update or obtain computer software and obtain computer equipment necessary for ICAN cross-reporting ...".

I declare that it is my information and belief that ICAN cross-reporting allows written reports transmission by "fax or electronic transmission" and that electronic transmission includes transmission using computers and specialized software.

I declare that it is my information and belief that electronic transmission using computers and specialized software is encompassed by the "electronic transmission" option and are in our jurisdiction a more reliable method of cross-reporting than the one relying entirely on fax machines for the following reasons:

1. Fax machines must constantly be checked to ensure that the phone line is plugged in and is functional, that the machine is turned on, that sufficient paper is available and that it is not jammed, unlike computerized systems.
2. Fax machines require staff to receive and distribute hard copies of written reports who are not at their workplace 24 hours a day, 7 days a week (24/7) while computerized systems are available 24/7.
3. Agencies (and there are 46 law enforcement agencies in our county) may change fax numbers, and the agency must communicate such changes to the Child Protection Hotline to ensure proper transmission and receipt of the fax.
4. The E-SCARS system, using computers, also has a database to track or produce reports regarding transmission, receipt of the SCAR, agency personnel assigned to investigate, agency findings, comments, report numbers, assigned District Attorney staff and court case numbers, assigned DCFS social workers, a tracked log of all activities by User on the system, and many more features. These features are not available via fax based cross report systems, and each feature of the E-SCARS computer based system collectively helps to assure as close to 100% compliance with the cross reporting statute as is possible.

Therefore, I declare that it is my information and belief that ICAN cross-reporting reimbursements should include those for computerized systems which are reasonably necessary in providing child abuse referrals and reports in a timely, reliable, and cost-efficient manner.

I declare that the California Department of Justice (DOJ) Form SS 8583, as revised in 12-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 investigation activity 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 investigation activities 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 Child Abuse Central Index (CACI).

I declare that is my information and belief that the processing of gathered evidence includes but is not limited to medical exams to determine if the child was sexually and/or physically abused, as well as the costs of autopsies to determine if a child's death was the result of child abuse.

I declare that the Los Angeles County Department of Children and Family Services (DCFS) routinely gathers, preserves and evaluates forensic evidence from medical and other tests ad examinations required to complete mandated fields in DOJ's Form SS 8583, as revised in June 2005 and I have attached a copy of DCFS's policy Procedural Guide 0600-500.0, Utilization of Medical HUBS, dated 7-17-2012

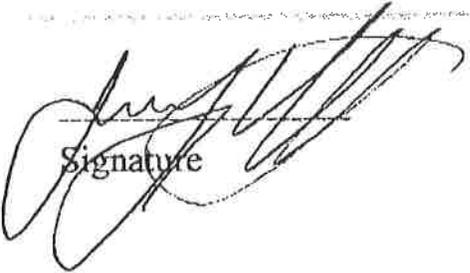
Therefore, I declare that it is my information and belief that DCFS costs of forensic child abuse tests and exams which are necessary to complete the mandated fields in DOJ's Form SS 8583, as revised in June 2005, are reimbursable.

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 matters which are stated as information and belief, and as to those matters I believe them to be true.

4-9-2013 @ NORWALK, CA

Date and Place

  
Signature

## F O R Y O U R I N F O R M A T I O N

Issue 06-15

Date: 02/21/06

### THE NEW MEDICAL HUB SYSTEM IS NOW OPERATIONAL COUNTYWIDE

Effective immediately, three Medical Hubs are now available to provide Initial Medical Exams and the forensic exams for DCFS-served children who are newly detained. The remaining three Medical Hubs will provide forensic exams only, but are scheduled to conduct Initial Medical Exams for newly detained children at a later date. (See schedule on Pages 2 and 3 of this FYI).

#### DEFINITIONS:

**Initial Medical Examination:** The State-required medical examination for all DCFS-placed children. Initial medical examinations are to be conducted within the first 72 hours of initial placement for high risk children and children 0-3 years of age; all other children are to have their Initial Medical Examination within the first 30 days of initial placement. The Initial Medical Exam is routine and preventive, and it is the first of the periodic medical exams that must occur when a child is under DCFS supervision. Please refer to the DCFS 561(a), Medical Examination form available on LA Kids or in your office stock room.

**Forensic Examination:** A physical exam to detect and treat child abuse injuries and neglect. A forensic exam is not required for all DCFS children and primarily, forensic exams are completed when there are allegations of physical or sexual abuse. A forensic exam is generally requested immediately and should take place within 72 hours if possible. Parental consent or a Court Order are not necessary for a forensic exam to be completed when the child has been taken into protective custody (detained) and a forensic specialist deems it is appropriate

#### MEDICAL HUBS PROVIDING INITIAL MEDICAL EXAMS AND FORENSIC EXAMS:

Medical Hubs	SPA	DCFS Offices
LAC+USC Medical Center <i>Violence Intervention Program</i>	3, 4 & 7	ERCP Belvedere Glendora/El Monte Metro North Pasadena Pomona
King/Drew Medical Center <i>Multi-Service Hub</i>	6 & 7	Century Compton Hawthorne Santa Fe Springs Wateridge
Children's Hospital Los Angeles* <i>Foster Care Hub</i>	2 & 5	West Los Angeles North Hollywood (backup)

*Children in Specialized Programs are served by all Medical Hubs.*

\*Although Children's Hospital Los Angeles (CHLA) is a non-public entity, it is operational to provide services to DCFS supervised children.



If you have any questions regarding this release please e-mail your question to:

[Policy@dcfs.co.la.ca.us](mailto:Policy@dcfs.co.la.ca.us)

Clerical Handbook: <http://198.51.213.151/Policy/Hndbook%20Clerical/Default.htm>

Child Welfare Services Handbook: <http://198.51.213.151/Policy/Hndbook%20CWS/default.htm>

FYI's: <http://dcfs.co.la.ca.us/Policy/FYI/TOCFYI.HTM>

All DCFS-supervised children placed in the areas served by the LAC+USC Medical Center, King/Drew Medical Center, or Children's Hospital Los Angeles Medical Hubs are to be taken to the Medical Hub specified for their area in the above table, for the Initial Medical Examination or a forensic exam.

For initial placements on newly detained children, the CSWs writing the Detention Report shall request a Court order for the child to be taken to a Medical Hub for the Initial Medical Exam. CSWs may request the Court to order a child to the Medical Hubs in any type of out-of-home placement.

**NOTE:** CSWs should not request the Court to order a child to receive his/her Initial Medical Exam, when the Medical Hub designated for the child's placement area is not presently providing Initial Medical Exams (see list below). However, if the Medical Hub is not currently providing the service of an Initial Medical Exam, but the CSW believes it is in the best interest for the child to have an Initial Medical Exam at a Medical Hub rather than having the caregiver take the child to his/her current provider, the CSW has the discretion of asking the Court to order the child to go to a Medical Hub for an Initial Medical Exam. If indeed a CSW makes this request to the Court, and if the Court then makes the order, the result would be that the caregiver would have to take the child to a Hub not in geographical proximity to the caregiver's home, or the CSW could volunteer to take the child for the Initial Exam.

CSWs are to use the following sample wording in their Court reports when requesting that the Court order a child to a Medical Hub for the Initial Medical Examination.

Initial Medical Exam

"We respectfully request that the Court make the following order:

Medical Hub services are ordered for \_\_\_\_\_. Services shall begin within thirty days of the Court's Order and shall include an initial medical evaluation, required follow-up and ongoing routine care by the Medical Hub or Medical Hub-referred providers. Information regarding these medical services shall be provided to DCFS for inclusion in the Court report. DCFS shall submit the Medical Hub Referral form to the appropriate Medical Hub and provide a copy of the completed referral form to the Court."

If the Court orders a child to be referred to a Medical Hub for the Initial Medical Exam the order will apply to licensed foster parents, relative caregivers, non-relative extended family members, Foster Family Agencies, as well as children placed in group homes. The CSW shall provide the caregiver with a copy of the Court order.

At the time of initial placement, it is the responsibility of the CSW who is placing the child, to verbally inform the caregiver of the new requirement to utilize the Medical Hubs, and to provide the caregiver with written notification via the Medical Hub Notice to Caregivers form included in the Placement Packet. DCFS has notified caregivers of this new resource through a mailing.

Once the CSW reviews the Medical Hub Notice to Caregiver form with the caregiver, the CSW, or the PHN, must complete a Medical Hub Referral form, and fax it to the appropriate Medical Hub. Please refer to the Medical Hub Referral form posted on LA Kids.

**MEDICAL HUBS PROVIDING FORENSIC EXAMINATIONS ONLY:**

Medical Hubs currently providing only forensic exams, will provide Initial Medical Exams **at later dates**. The scheduled dates for implementation of the Initial Medical Exams are noted below. Until these Medical

Hubs begin providing Initial Medical Exams, the child should receive the Initial Medical Exam from a health care provider currently utilized by the caregiver.

All DCFS-supervised children placed in the areas served by the High Desert Health System, Olive View Medical Center, and Harbor-UCLA Medical Center are to be taken to the Medical Hub specified for their area in the table below, for a forensic exam.

<u>Medical Hubs</u>	<u>SPA</u>	<u>DCFS Offices</u>	<u>Target Date for Initial Exam Implementation</u>
High Desert Health System	1	Palmdale Lancaster	April-May 2006
Olive View-UCLA Medical Center	2	North Hollywood Santa Clarita	April-May 2006
Harbor-UCLA Medical Center	8	Lakewood Torrance	April-May 2006

Children in Specialized Programs are served by all Medical Hubs.

**Related forms located on LA kids:**

- DCFS 561 (a), Medical Examination
- Medical Hub Notice to Caregivers (English and Spanish versions)
- Medical Hub Referral

Medical Hubs for the Department of Children and Family Services  
Initial Medical Examinations and Forensic Examinations

Facility Name and Address	Hours	Services Available	Medical Director	Contact Information
High Desert Health System North County SCAN Clinic 44900 N. 60 <sup>th</sup> Street West Lancaster, CA 93536 (661) 945-8353 FAX (661) 945-8284	Mondays - Fridays 8:00 a.m. – 4:30 p.m.	Forensic physical and sexual abuse evaluations and mental health screening only	Ramasamy Mahadevan, MD	Karen Peterson (661) 945-8493  Barbara Jacoby (661) 945-8353
Olive View-UCLA Medical Center SCAN Clinic Room 2A221 14445 Olive View Dr. Sylmar, CA 91342 (818) 364-4680 FAX (818) 364-4682	Monday – Friday 8:00 a.m. – 4:30 p.m. After Hours use pediatric emergency room	Forensic physical and sexual abuse evaluations and mental health screening only	Rona Molodow, MD	Nadine Miranda (818)364-4680
Children's Hospital Los Angeles Foster Care Hub Foster Care Clinic 5000 Sunset Blvd., 7 <sup>th</sup> Floor Los Angeles, CA 90027 (323) 669-2350 (Ask for Intake) FAX (323) 671-3843	Initial Medical Exam: Mon., Wed, & Fri. 9:00 a.m. – 12:00p.m.	Medical exam and mental health screening.	Suzanne Roberts, MD	To Be Determined
Forensic: 4650 Sunset Blvd., 1 <sup>st</sup> Floor Los Angeles, CA 90027 (323) 660-2450, Ext. 4977 FAX (323) 671-3648	Monday – Friday 1:00p.m. – 5:00p.m.	Forensic physical and sexual abuse	Karen K. Imagawa, MD	
Five Specialty Mental Health Treatment Programs 5000 Sunset Blvd. Los Angeles 90027 (323) 669-2350 FAX (323) 671-3843	Monday – Friday 8:00 a.m. – 5:00p.m.	a) Intervention for Victims of Abuse & Trauma b) Assessment, Intervention & Linkage for Young Children c) Home-based Assessment & Intervention d) Assessment & Intervention for School-aged Children e) Assessment & Intervention for Adolescents & Transitional Aged Youth	Brad Hudson, Psy.D	
a) Project Heal b) Early Childhood Program c) Corazon de La Familia d) Child and Family Program e) Adolescents & Transitional Aged Youth				
LAC+USC Medical Center - Violence Intervention Program (VIP)	Monday – Friday 8:00 a.m. – 4:00 p.m. After Hours: (323) 226-3601	Forensic physical and sexual abuse evaluations	Astrid Heger, MD	Janice Woods, MD (323) 226-3961
a) Forensic Medical Clinic (VIP) LAC+USC Medical Center 1240 N. Mission Road, Trailer- II Los Angeles, CA 90033 (323) 226-3961				
b) Community-Based Assessment and Treatment (CATC) Program North Hall (e.g. Hub Clinic) 1739 Griffin Avenue Los Angeles, CA 90031 (323) 226-5086 FAX (323) 226-5134 For Initial Medical Exam. Call for forensic exam	Monday – Friday 8:00 a.m. – 5:00 p.m.	Physical and mental health assessments Ongoing physical and mental health services for children in foster care	Janet Arnold, MD	Jorge Fuentes, MD (323) 226-5086
King/Drew Medical Center Multi-Service HUB Jaron Gammons Hub Building 1721 East 120 <sup>th</sup> Street Los Angeles, CA 90059 (310) 668-6400 FAX (310) 223-0728	Monday – Friday 8:00 a.m. – 4:30 p.m. After Hours use pediatric emergency room	Forensic physical and sexual abuse evaluations and mental health screening and assessments	Xylina Bean, MD	Kerry English, MD (310) 668-4872
Harbor-UCLA Medical Center Child Crisis Center Building N-26 1000 W. Carson Street Torrance, CA 90509 (310) 222-3567 FAX (310) 320-7849	Monday – Friday 8:00 a.m. – 5:00 p.m. After Hours use pediatric emergency room	Forensic physical and sexual abuse evaluations and mental health screenings only	Sara Stewart, MD	Rosa Beaumont (310) 222-3567



**County of Los Angeles  
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

425 Shatto Place, Los Angeles, California 90020  
(213) 351-5602

PHILIP L. BROWNING  
Director

FESIA A. DAVENPORT  
Chief Deputy Director

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GLORIA MOLINA  
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MICHAEL D. ANTONOVICH  
Fifth District

**Review of Commission’s Proposed Parameters and Guidelines Interagency Child Abuse and Neglect Investigation Reports (ICAN) Program**

**Declaration of Francesca LeRúe**

Francesca LeRúe makes the following declaration and statement under oath:

I, Francesca LeRúe, the Acting Division Chief of the Los Angeles County Department of Children and Family Services (DCFS), Risk Management Division, am the manager who oversees the section responsible for conducting due process hearings requested by those persons who maintain that DCFS erroneously reported them to the State Department of Justice (DOJ) for inclusion in the Central Child Abuse Index (CACI).

I have read the portion of the Commission on State Mandates (Commission) proposed parameters and guidelines (Ps&Gs) which states, on page 13, that due process procedures are necessary and that their costs are reimbursable as follows:

“City and county police or sheriff’s departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Provide due process reasonably necessary to comply with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ’s Child Abuse Central Index. This activity includes a hearing before the agency that submitted the individual’s name to CACI. This activity includes any due process procedures available to persons listed in the CACI prior to the enactment of Statutes 2011, chapter 468.

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April 9, 2013  
Declaration of Francesca LeRúe  
Page 2 of 3

Reimbursement is not required for a hearing meeting the requirements of due process if a court of competent jurisdiction has determined that child abuse has occurred, or while the allegation is pending before a court.

Authority: 26 (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468 (AB 717)); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.”

I have read DCFS Procedural Guide 0070-548.18 (CHILD ABUSE CENTRAL INDEX (CACI) REVIEW HEARINGS), and a true and correct copy of that document is attached to this declaration and incorporated by reference herein.

DCFS Procedural Guide 0070-548.18 (CHILD ABUSE CENTRAL INDEX (CACI) REVIEW HEARINGS) describes how DCFS conducts CACI grievance review hearings.

I declare that it is my information and belief that the costs of due process procedures established and maintained by DCFS, which are detailed in the attached DCFS Procedural Guide 0070-548.18 (CHILD ABUSE CENTRAL INDEX (CACI) REVIEW HEARINGS), are reimbursable because the activities detailed in the DCFS Guide are reasonably necessary in complying with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ's Child Abuse Central Index.

By way of illustration, California Department of Social Services ("CDSS") issued regulations which govern CACI review hearings and with which my staff, and other DCFS employees are required to comply. California Department of Social Services Manual regulation 31-020.6 requires that our CACI grievance review hearings be conducted in a certain manner. Among other things, each party and their attorney or representative are authorized to be present. (California Department of Social Services Manual regulation 31-020.64.) Not infrequently, aggrieved parties do retain lawyers who must then be allowed to be present during the CACI grievance review hearing. When the aggrieved party brings a lawyer, the other party, namely the county's decision-making social worker, will request that a lawyer appear and assist them at the grievance review hearing. That county lawyer must also be allowed to attend the hearing. Minimum standards of due process prevent the lawyer who advised the initial decision maker and who represents them at the grievance hearing from also serving as the advisor to the review agent; consequently, a separate County lawyer must also be designated to advise the review agent. (See e.g. *Nightlife Partners v. Beverly Hills*, 108 Cal. App. 4<sup>th</sup>

April 9, 2013  
Declaration of Francesca LeRúe  
Page 3 of 3

81.) Without such an arrangement, we would not meet the minimum requirements of due process.

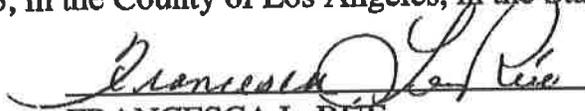
I have read State of California Health and Human Services Agency form SOC 834, and a true and correct copy of that document is also attached to this declaration and incorporated by reference herein.

Form SOC 834 was developed by the State of California Health and Human Services Agency so that it could be used by persons who wish to request a grievance review hearing to challenge their referral to the Child Abuse Central Index. Section C provides space for the aggrieved party's attorney or representative to list his or her name, address and telephone number. This further illustrates that the State allows aggrieved parties to bring attorneys to the grievance review hearing, thereby necessitating involvement by lawyers representing the County.

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 matters, which are stated as information and belief, and as to those matters I believe them to be true.

Executed this 9<sup>th</sup> day of April 2013, in the County of Los Angeles, in the State of California.

  
FRANCESCA LeRÚE  
DECLARANT

## Procedural Guide

0070-548.18

### CHILD ABUSE CENTRAL INDEX (CACI) REVIEW HEARINGS

Date Issued: 03/05/12

New Policy Release

Revision of Existing Procedural Guide 0070-548.18, Notice of Report to the Child Abuse Central Index, dated 09/29/10.

**Revision Made:** .NOTE: Current Revisions are Highlighted

This Procedural Guide has been updated to reflect the passage of AB 717, which made significant changes to the reporting requirements to the Child Abuse Central Index (CACI). Effective January 1, 2012, CSWs will be required to forward to the Department of Justice (DOJ) the BCIA 8583 **ONLY** when a child abuse/neglect investigation is concluded with a **substantiated finding** in the categories as designated on the BCIA 8583. Referrals with an **inconclusive allegation conclusion are no longer reportable to the DOJ**. Also added that CSWs are to contact their out stationed County Counsel when documents and other evidence is requested that support the CACI submission to DOJ and when a CSW is required to attend a grievance hearing.

Cancel: None

#### DEPARTMENTAL VALUES

This Procedural Guide supports the Department's efforts to provide safety for children.

#### WHAT CASES ARE AFFECTED

This Procedural Guide is applicable to all new and existing referrals and cases.

#### OPERATIONAL IMPACT

The Penal Code requires that all reports of abuse, severe neglect, and exploitation that are investigated by a social worker and found to be substantiated, be reported to the Department of Justice. The Department of Justice does not require notice when the

allegations are of general neglect or when an investigation concludes the allegations are unfounded or inconclusive. The law further requires our Department to notify the known or suspected child abuser when his or her name is reported to the Department of Justice. The Department of Justice will then submit these names to the Child Abuse Central Index.

Previously, in response to *Burt v. County of Orange*, DCFS established a process for individuals, who believe that DCFS incorrectly reported them to the Department of Justice or that their name was listed on the Child Abuse Central Index in error, to challenge DCFS' action. However, because of the *Gomez v. Saenz* lawsuit, that process has been revamped to meet the requirements of the lawsuit settlement.

The *Gomez v. Saenz* lawsuit originated in July 2004, and was settled on October 9, 2007. The lawsuit addresses the rights of individuals whose names either are or will be listed on the CACI. Based on the settlement agreement, beginning March 1, 2008 individuals are to be provided appropriate notice of their CACI listing as well as the right to appeal the listing via an administrative grievance review hearing. In addition, the settlement allows individuals, who may not have received a notice of their right to appeal prior to March 1, 2008, to challenge their listing on the CACI.

The grievance officer conducting these grievance hearings shall be:

- A staff or other person not involved in the investigation of the alleged child abuse or severe neglect.
- Neither a co-worker nor a person directly in the chain of supervision of any of the persons involved in the investigation of the alleged abuse or severe neglect unless the grievance officer is the Director or Deputy Director of DCFS.
- Knowledge in the field of child abuse or neglect investigations and capable of objectively reviewing the complaint.

DCFS' Chief Grievance Review Officer of the Appeals Management Section has been designated to process these requests and conduct the review hearings.

**Also, the CSW who conducted the investigation into the suspected child abuse or severe neglect shall be present at the grievance hearing, if that person is employed by DCFS and is available to participate in the grievance hearing. For the purposes of this paragraph, a conflict in work assignments shall not render the CSW who conducted the investigation unavailable to participate in the hearing.**

For instructions on how to complete the BCIA 8583, see Procedural Guide 0070-458.17, Completion and Submission of the BCIA 8583, Child Abuse or Severe Neglect Indexing Form.

## Procedures

### A. WHEN: THE KNOWN OR SUSPECTED CHILD ABUSER CONTACTS THE CSW TO DISPUTE THE SUBMISSION OF HIS/HER NAME TO DEPARTMENT OF JUSTICE

#### CSW Completing the Investigation Responsibilities

1. Refer the caller to the SCSW responsible for the investigation. Discuss the dispute with that SCSW and contact the out stationed County Counsel regarding the dispute. If there is no out stationed County Counsel, contact CACI paralegals at (323) 526-6224 or (323) 526-6109.
2. Assist in preparation of the grievance request if assistance is requested by the complainant.
3. If contacted by the Chief Grievance Office to submit any documents and other evidence that support the CACI submission to DOJ, contact the out stationed County Counsel regarding the request, or if there is no out stationed County Counsel contact CACI paralegals at (323) 526-6224 or (323) 526-6109. **At no time shall records requests be handled by CSWs without the assistance of County Counsel.** See Procedural Guide 0500-501.10, Releasing DCFS Case Record Information.
4. When notified that your presence is required at a CACI grievance review hearing, contact the out stationed County Counsel to prepare for the hearing. If an out stationed County Counsel is not assigned to your office, contact CACI paralegals at (323) 526-6224 or (323) 526-6109 or contact Principal Deputy County Counsel Scott Miller at (661) 702-6256.

#### SCSW Responsibilities

1. If the known or suspected child abuser contacts the CSW to dispute the submission of his or her name to Department of Justice, discuss the dispute with the CSW responsible for the investigation.
2. Discuss the submission of the **SOC 832, SOC 833 and SOC 834** with the known or suspected child abuser. If (s)he is unsatisfied with the outcome of this discussion, advise him or her to submit a written request for a review to the Chief Grievance Review Officer at:

DCFS Appeals Management Section  
Attention: Chief Grievance Review Officer  
501 Shatto Pl., Suite 373  
Loa Angeles, Ca 90020

3. If contacted by the Chief Grievance Office to submit any documents and other evidence that support the CACI submission to DOJ, contact your out stationed County Counsel regarding the request, or if there is no out stationed County Counsel contact CACI paralegals at (323) 526-6224 or (323) 526-6109. **At no time shall records requests be handled by CSWs without the assistance of County Counsel.** See Procedural Guide 0500-501.10, Releasing DCFS Case Record Information.

#### **B. WHEN: CHIEF GRIEVANCE REVIEW OFFICER RECEIVES A REQUEST FOR GRIEVANCE HEARING**

An individual wishing to challenge his or her referral to the CACI may request a grievance hearing as follows.

1. The individual must submit a written and signed request for a grievance hearing.
2. The request for grievance shall set forth the facts, which the individual believes provides a basis for reversal of DCFS' finding of substantiated abuse.
3. The individual shall mail his or her request to DCFS within 30 calendar days of the date the notice and request for grievance was mailed to the individual as the perpetrator of the alleged abuse or serious neglect. An individual's failure to mail the request for grievance within the prescribed time frame shall constitute waiver of the right to a grievance.

Further, for individuals to whom *no prior notification* was mailed regarding his or her referral to the CACI, the individual shall file the request for grievance **within 30 calendar days** of becoming aware that he or she is listed on the CACI and/or becoming aware of the grievance process.

For purposes of this section, a complainant is deemed aware of the county action or finding when the county mails adequate notice to the complainant's last known address

**No grievance hearing shall be required when a court of competent jurisdiction (e.g. Dependency Court) has determined that the suspected abuse or severe neglect has occurred, or when the allegation of child abuse or severe neglect resulting in a referral to the CACI is pending before the court.**

In these cases, the Appeals Management Section Staff will place the initial grievance request on hold and track the results of the court's decision. If, however, the **court does not sustain** the petition, the individual would then have the opportunity to contest the listing and request a hearing within the timeframe allowed per grievance procedures.

In addition, the Gomez settlement permits DCFS to conduct an internal review of the case to address or rectify the matter identified in the request for grievance **prior** to the hearing. The DCFS Chief Grievance Review Officer may resolve a grievance at any time by modifying a finding of substantiated abuse or neglect to unfounded and notifying DOJ of the need to remove the individual from the CACI.

**Chief Grievance Review Officer Section Staff Responsibilities**

1. Determine the following:

- a.) Was the SOC 834, *Request for Grievance Hearing*, submitted in a timely manner?;
- b.) Has any superior court found that the suspected abuse or severe neglect has occurred?;
- c.) Is the allegation of child abuse or severe neglect resulting in a referral to the CACI pending before a superior court?

If any of the above conditions exists, notify the requesting individual by letter that their request for a grievance hearing is being denied and, provide the reasons for the denial.

2. If the SOC 834 does not have all the necessary information, contact the individual and assist them in completing the SOC 834 correctly.

3. Determine if the matter identified in the request for grievance hearing can be rectified by a review of the case record. If it is determined that the finding of substantiated abuse or sever neglect **can be changed** to unfounded with such a review of the case record, proceed to Part D. of this Procedural Guide

4. If the SOC 834 has been submitted in a timely manner and contains the necessary information and it is determined that the matter **cannot be resolved** without a grievance hearing, proceed to Part C of this Procedural Guide.

**C. WHEN: CONDUCTING A GRIEVANCE HEARING**

The individual requesting the grievance hearing may have an attorney or other representative present at the hearing to assist him or her. Pursuant to California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31Section 31-021.62, DCFS, The individual requesting the grievance hearing and his or her representatives, if any, shall be permitted to examine all records and evidence related to the county's investigative activities and investigative findings associated with the original referral that prompted the CACI listing, except for information that is otherwise made confidential by law. Also, prior to communicating

with any attorney, or any other individual, claiming to speak on behalf of the aggrieved party, DCFS must get a copy of the signed authorization.

The grievance review hearing shall be conducted as follows:

The grievance hearing shall be, to the extent possible, conducted in a non-adversarial atmosphere.

Pursuant to California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31 Section 31-021.621, the County and individual requesting the grievance hearing shall make available for inspection all records and evidence related to the original referral that prompted the CACI listing, except for information that is otherwise made confidential by law.

Each party and their attorney or representative shall be permitted to examine the documents and other evidence, which the opposing party intends to introduce at the grievance hearing. All relevant evidence, related to the original referral that prompted the CACI listing, whether inculpatory or exculpatory, should be permitted to be examined in advance of the hearing. Witness lists shall be available for exchange in advance of the hearing. Failure to disclose evidence or witness lists in advance of the hearing can constitute grounds for objecting to consideration of the evidence at the hearing or to hearing the testimony of a witness during the hearing. Any documents or other evidence disclosed by the county to the complainant and/or his or her attorney or representative for the hearing shall be returned to DCFS at the conclusion of the hearing.

DCFS and the complainant shall make available for inspection the documents and other evidence they intend to rely upon at the grievance hearing at least **10 business days** prior to the hearing to the extent permitted by law.

DCFS and the complainant shall make available to the other party a list of witnesses they intend to call at the grievance hearing at least **10 business days prior** to the grievance hearing, to the extent permitted by law.

Pursuant to California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31 Section 31-021.621(a), the County shall redact such names and personal identifiers from the records and other evidence as required by law and to protect the identity, health, and safety of those mandated reporters of suspected child abuse and/or neglect pursuant to Penal Code Section 11167. The county may further redact information regarding the mandated reporter's observations of the evidence indicating child abuse and/or neglect.

Each party and their attorney or representative and witnesses while testifying, shall be the only persons authorized to be present during the hearing unless all parties and the grievance officer consent to the presence of other persons. The information disclosed at the grievance hearing may not be used for any other purpose. The parties agree that

no information presented at the grievance hearing will be disclosed to any person other than those directly involved in the matter. The evidence and information disclosed at the grievance hearing may be part of an administrative record for a writ of mandate challenging the final decision of the DCFS Director. The administrative record shall be kept confidential, including, if any of the parties request, that it be filed with the court under seal.

All testimony shall be given under oath or affirmation. The grievance officer does not have subpoena power. However the parties may call witnesses to the hearing and question the other party's witness. The grievance review officer may limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression, or harassment.

The Chief Grievance Review Officer may prevent the presence and/or examination of a child at the grievance hearing for good cause, including but not limited to protecting the child from trauma or to protect his or her health, safety, and/or well-being. The Chief Grievance Review Officer may permit the testimony and/or presence of a child only if the child's participation in the grievance is voluntary and the child is capable of providing voluntary consent. The Chief Grievance Review Officer may interview the child outside the presence of the parties in order to determine whether the child's participation is voluntary or whether good cause exists for preventing the child from being present or testifying at the hearing.

DCFS shall first present its evidence supporting its findings of substantiated abuse or neglect. The complainant will then provide his or her evidence supporting his or her claim that DCFS' finding should be withdrawn or changed. DCFS shall then be allowed to present rebuttal evidence in further support of its finding. Thereafter, the Chief Grievance Review Officer has the discretion, to allow the parties to submit additional evidence as necessary to evaluate, whether a finding of substantiated abuse is warranted.

The Chief Grievance Review Officer shall have the authority to continue the hearing for a period not to exceed **10 calendar days** if additional evidence or witnesses are necessary for determination of the issue.

**NOTE:** California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31 Section 31-021.64 states that the information disclosed at the grievance hearing may not be used for any other purpose unless otherwise required by law (e.g., **if information from the hearing involves new allegations that pertain to child safety, mandatory reporting laws take precedence in this situation.**) No information presented at the grievance hearing shall be disclosed to any person other than those directly involved in the matter. Any records and other evidence disclosed by the county to the complainant or the complainant's representative shall be returned to the county at the conclusion of the hearing.

Grievance review proceedings shall be audio recorded as part of the official administrative record. It will be the responsibility of the Chief Grievance Review Officer's staff to possess and maintain the administrative record of the hearing. The complainant or the complainant's attorney shall be entitled to inspect the transcript and/or recording, however DCFS shall keep possession of the transcript, and tape, and its contents will remain under seal. Where the complainant seeks to inspect the transcript, the costs for transcribing a recording of the hearing shall be assessed to the complainant. DCFS shall lodge the administrative record with the court if any party seeks judicial review of the final decision of the Director of DCFS.

The grievance hearing record shall be retained for a length of time consistent with current law, regulations, or judicial order, which governs the retention of the underlying record, **but not less than one year** from the decision date in any circumstance, and shall include the documents and other evidence accepted as evidence at the hearing.

**Chief Grievance Review Officer Section Staff Responsibilities**

1. Schedule the grievance hearing within **10 business days and held no later than sixty calendar days** from the date the request for grievance is received, unless otherwise agreed to by the individual and DCFS.
2. At least **30 calendar days** prior to the scheduled grievance hearing, mail a letter on DCFS letterhead to the individual informing him or her of the date, time and place of the grievance hearing.

**NOTE:** Either party may request a continuance of the grievance hearing not to exceed **10 business days**. Additional, continuances, or dismissal of the hearing, shall be granted with mutual agreement of all parties involved, or for good cause.

3. At least **30 calendar days** prior to the grievance hearing, notify the investigating CSW by e-mail and by telephone, that their presence is required at the grievance hearing. Inform them of the date, time, and place of the grievance hearing. In addition, inform the CSW's SCSW and ARA by e-mail and telephone of the scheduled grievance hearing.

**NOTE:** A conflict in work assignments **shall not** render the CSW who conducted the investigation unavailable to participate in the hearing.

If the CSW is no longer an employee of DCFS, attempt to locate that CSW's former SCSW at the time of the investigation and request that they be present at the grievance hearing.

4. If the individual is planning to have an attorney at the hearing:
  - a) instruct the investigating CSW to have their Outstation Attorney present; and
  - b) contact the designated Advise County Counsel Attorney to assist the Chief Grievance Review Officer in the grievance hearing.

**Chief Grievance Review Officer Responsibilities**

1. Record and conduct the grievance review hearing.
2. Administer the oath to all witnesses.
3. In the event that a child may be a witness, interview the child outside the presence of the parties in order to determine whether the child's participation is voluntary or whether good cause exists for preventing the child from being present or testifying at the hearing.

**NOTE:** The grievance officer may limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression, or harassment.

4. Review and evaluate documentary evidence.
5. Based on the evidence presented at the hearing determine whether the allegation of abuse or neglect is unfounded, inconclusive or substantiated as defined in penal Code Section 11165.12.
6. Provide a written recommended decision to the Director or Chief Deputy within **30 calendar days** of the close of the grievance hearing. The decision shall contain a summary statement of the facts, the issues involved, findings, and the basis for the decision.

**Director Responsibilities**

The Director of DCFS shall issue a written final decision adopting, rejecting, or modifying the recommended decision within **10 business days** after the recommend decision issues. The Director of DCFS shall explain why a recommended decision was rejected or modified.

**NOTE:** The final decision **shall** be based upon the evidence presented at the hearing.

**C.1 WHEN: THE CHIEF GRIEVANCE REVIEW OFFICER IS UNABLE TO CONDUCT A FAIR AND IMPARTIAL HEARING.**

Pursuant to California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31 Section 31-021.54, -31-021.55:

- A grievance review officer shall voluntarily disqualify him or herself and withdraw from any proceeding in which he or she cannot give a fair and impartial hearing or in which he or she has an interest.
- A claimant may request at any time prior to the close of the record, that the grievance review officer be disqualified upon the grounds that a fair and impartial hearing cannot be held or a decision cannot be rendered.
- Such request shall be ruled upon by the grievance review officer prior to the close of the record. The grievance review officer's determination is subject to rehearing review and judicial review in the same manner and to the same extent as other determinations of the grievance review officer in the proceeding.
- If, at the beginning or during the hearing, the grievance review officer upholds a party's motion for disqualification, the matter shall be postponed. A postponement due to a disqualification of a grievance review officer shall be considered a postponement with good cause. If, after the hearing, but before the close of the record the grievance review officer determines that disqualification is appropriate, the provisions of Section 31-021.55 shall apply.
- A staff or other person who is available to prepare the proposed decision. If the grievance review officer who heard the case is unavailable to prepare the proposed decision, the County Director or his or her designee shall contact the claimant and the county and notify each party that the case is being assigned to another grievance hearing officer for preparation of the decision on the record.
- The notice shall inform the claimant that he or she may elect to have a new grievance hearing held in the matter, provided that he or she agrees to waive the ten (10) day or sixty (60) day period set forth in Section 31-021.4.
- A grievance review officer shall be considered unavailable within the meaning of this section if he or she:
  - (a) Is incapacitated.
  - (b) Has ceased employment as a grievance review officer.
  - (c) Is disqualified under Section 31-021.54-542.

**D. WHEN: NOTIFYING DEPARTMENT OF JUSTICE OF A CORRECTION  
TO THE CHILD ABUSE CENTRAL INDEX**

**Chief Grievance Review Officer Section Staff Responsibilities**

1. Mail the DCFS 5632, Response Letter to Child Abuse Central Index Inquiries to:

- Each complainant that requested a grievance hearing;
- The complainant's attorney or representative, if any; and,
- The California Department of Social Services at:

California Department of Social Services  
Attri: Child Welfare Policy and Program Development Bureau  
744 P Street, MS 11-87  
Sacramento, CA 95814

2. If the finding of substantiated abuse or neglect is changed because of the grievance hearing, advise DOJ of the change and request that the complainant's name be removed from the CACI or that the designation of substantiated abuse or neglect be changed accordingly.

3. Within 5 business days of making the change, submit to the DOJ the following:

- A new BCIA 8583, which states that supplementary information is being provided for a previously submitted BCIA 8583 (check the appropriate box in Section C. "Amended Report Information.").

4. Send the above documents to the DOJ at:

Department of Justice  
4949 Broadway, Room B216  
Sacramento, CA 95820  
The DOJ will also accept forms

**NOTE:** The DOJ will also accept letters submitted via email or fax. Submit the information to: [DOJChildProtectionProgram@doj.ca.gov](mailto:DOJChildProtectionProgram@doj.ca.gov) or fax (916) 227 4094.

**E. WHEN: UPDATING CWS/CMS WHEN THERE IS A CHANGE IN INVESTIGATION DISPOSITION**

**Chief Grievance Review Officer Section Staff Responsibilities**

Update the Allegation Notebook of the referral CWS/CMS whenever there is a change in investigation disposition as the result of a case review or grievance review hearing. In addition, document on the ID page of the referral tool that there was a request for a grievance hearing, and the results of the hearing place.

**APPROVAL LEVELS**

Section	Level	Approval
A.-E.		None

**OVERVIEW OF STATUTES/REGULATIONS**

**Penal Code Section 11165.12**

- (a) Unfounded report means a report which 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, as defined in Section 11165.6.
- (b) Substantiated report means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred. A substantiated report shall not include a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse or neglect as defined in Section 11165.6.
- (c) Inconclusive report means a report which is determined by the investigator, who conducted the investigation not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

**Penal Code Section 11169 (a), (b) and (c)**

- (a) 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 to be substantiated, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. 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 and shall not retain the report. 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. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

- (b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.
- (c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

**Penal Code Section 11170(b)(2)**

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

**California Code of Regulations Title 11, section 901(a)**

"Active Investigation" means the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, at a minimum: assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es) when appropriate and/or available; 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 investigating agency.

**California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31 Sections 31-003, 31-021, 31-410, and 31-501**

Sets forth the requirements for conducting a CACI Review Hearing.

**County Letter (ACL) 07-53, Gomez v. Saenz Lawsuit Settlement**  
**County Information Notice (ACIN) 1-21-08, Implementation Activities for Gomez V. Saenz Lawsuit Settlement**

ACIN 1-22-08, Implementation Activities for Gomez V. Saenz Lawsuit Settlement

**RELATED POLICIES**

- Procedural Guide 0050-501.10, Child Abuse and Neglect Reporting Act (CANRA): Who Must Report
- Procedural Guide 0050-501.40, Child Abuse Reporting Act (CANRA): Immunities and Liabilities
- Procedural Guide 0070-548.10, Disposition of the Allegations and Closure of the Emergency Response Referral
- Procedural Guide 0070-548.17, Completion and Submission of the BCIA 8583, Child Abuse or Severe Neglect Indexing Form
- Procedural Guide 0500-501.10, Releasing DCFS Case Record Information.
- Procedural Guide 0500-501.15, Releasing Case Record Information to Child Welfare Agencies Outside California

**LINKS**

- California Codes <http://www.leginfo.ca.gov/calaw.html>
- Division 31 Regulations <http://www.cdss.ca.gov/ord/PG309.htm>
- Title 22 Regulations <http://www.dss.cahwnet.gov/ord/PG295.htm>
- Link to Translated State Forms:  
[http://www.dss.cahwnet.gov/cdssweb/FormsandPu\\_274.htm](http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm)

**FORM(S) REQUIRED/LOCATION**

- Hard Copy:** None
- LA Kids:**
  - DCFS 5632**, Response Letter to Child Abuse Central Index Inquiries
  - SOC 832**, Notice of Child Abuse Central Index Listing
  - SOC 833**, Grievance Procedures for Challenging Reference to the Child Abuse Central Index
  - SOC 834**, Request for Grievance Hearing
- CWS/CMS:**
  - BCIA 8583**, Child Abuse or Severe Neglect Indexing Form
  - SOC 832**, Notice of Child Abuse Central Index Listing
  - SOC 833**, Grievance Procedures for Challenging Reference to the Child Abuse Central Index
  - SOC 834**, Request for Grievance Hearing
- SDM:** None



**NOTICE OF CHILD ABUSE CENTRAL INDEX LISTING**

NAME OF ALLEGED SUSPECT

COUNTY OF

The \_\_\_\_\_ County Child Welfare Services agency has completed an investigation of alleged child abuse or severe neglect and determined that the allegations of abuse or severe neglect are substantiated. Pursuant to Penal Code Section 11169(b), this is notice that the finding of substantiated abuse or severe neglect was sent to the California Department of Justice (DOJ) for inclusion in the Child Abuse Central Index (CACI). The CACI contains certain information that enables authorized entities to locate investigations of alleged child abuse or severe neglect conducted by county child welfare departments.

Law enforcement agencies, court investigators, probation departments and district attorneys may use the CACI when investigating allegations of child abuse or neglect. The CACI is also used by licensing agencies and county welfare agencies to investigate persons who apply for licenses or employment to care for children in licensed facilities. If any of these agencies receive information from the CACI that there was a prior investigation of child abuse or severe neglect, they are required to conduct an independent review of the child abuse or severe neglect investigation.

**REPORTS OF SUSPECTED CHILD ABUSE MAINTAINED BY DOJ ARE CONFIDENTIAL AND MAY ONLY BE DISCLOSED TO STATUTORILY AUTHORIZED PARTIES (PENAL CODE SECTION 11167.5)**

The County has determined that the allegation of child abuse or severe neglect against you is substantiated

A substantiated finding is defined by Penal Code section 11165.12(b) to mean that the investigator who conducted the investigation determined that, based upon the evidence, it was more likely than not that child abuse or neglect occurred.

**The term child abuse and neglect is defined by Penal Code section 11165.6. This determination is based on the following information discovered during the investigation:**

NAME OF ALLEGED VICTIM(S):

DATE(S) AND LOCATION(S) THE ALLEGED ABUSE OR SEVERE NEGLECT OCCURRED:

THE SPECIFIC ACT(S) OF ABUSE OR SEVERE NEGLECT ALLEGED AGAINST YOU IS/ARE AS FOLLOWS:

REFERRAL NUMBER:

No action on your part is required at this time. However, if you want to challenge your listing on the CACI, you must complete the enclosed Request for Grievance Hearing form, and mail it to the following address:

You must mail the completed Request for Grievance Hearing form no later than 30 days from the date of this notice. As part of the grievance hearing procedures, you may inspect all records and evidence related to investigation of the referral, except for information made otherwise confidential by law. This information may be requested by checking the box under the signature line of the Request for Grievance Hearing form. For more information, you can contact:

COUNTY STAFF PERSON:

PHONE

DATED

( )

SOC 832 (1/13)

# REQUEST FOR GRIEVANCE HEARING

REFERRAL NUMBER

COUNTY OF

No grievance hearing shall be required when a court of competent jurisdiction has determined that the suspected abuse or severe neglect has occurred, or when the allegation of child abuse or severe neglect resulting in the referral to the Child Abuse Central Index is pending before the court.

## A. CONTACT INFORMATION

NAME:

DATE OF BIRTH

STREET ADDRESS:

CITY:

STATE:

ZIP CODE:

TELEPHONE NUMBER:

ALTERNATE NUMBER:

( )

( )

I hereby request a grievance hearing to dispute the decision to list my name on the Child Abuse Central Index (CACI). I acknowledge that I have received a copy of the Notice of Child Abuse Central Index Listing and a copy of the Grievance Hearing Procedures.

## B. REASON FOR GRIEVANCE

The reason I am requesting a grievance hearing is because **(YOU MUST CHECK AT LEAST ONE)**:

- I am not the person who committed the alleged act(s) of abuse or severe neglect.
- The alleged act(s) of abuse or severe neglect did not occur.
- Even if the alleged act(s) occurred, these acts are not abuse or severe neglect within the meaning of the Child Abuse and Neglect Reporting Act.
- Other. If this box is checked, please explain below. If you need more space for your explanation, you may attach additional pages to this form.

SIGNATURE:

DATED:

- Check this box if you would like to schedule an appointment so that you can examine all records and evidence related to investigation of the referral, except for information made otherwise confidential by law. At this appointment, you must also bring and disclose to the county all records and evidence that support your claim that you should not be listed on the CACI.

You may have an attorney or other representative present at the hearing to assist you. If you intend to have an attorney or other representative present, please provide us with the following information.

## C. ATTORNEY/REPRESENTATIVE INFORMATION

ATTORNEY OR REPRESENTATIVE'S NAME:

PHONE NUMBER:

ATTORNEY OR REPRESENTATIVE'S ADDRESS:

Please return this Request for Grievance to this address:  
Address:

Attn:

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



KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-3873  
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE  
AUDITOR-CONTROLLER

Los Angeles County Review  
Commission Staff Analysis and Proposed Parameters and Guidelines  
Interagency Child Abuse and Neglect Investigation Reports Program (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 review.

I declare that I have met and conferred with County staff responsible for implementing provisions of the Interagency Child Abuse and Neglect (ICAN) program found to be reimbursable by the Commission on State Mandates (Commission) at their December 6, 2007 hearing, in preparing the attached review.

I declare that the subject review that I have prepared includes sworn declarations of County staff which detail reasonably necessary and reimbursable activities which are based on ICAN's provisions which were found to be reimbursable by the Commission at their December 6, 2007 hearing.

I declare that it is my information and belief that Commission staff's proposed ICAN Ps&Gs as modified by the County provide eligible claimants with complete reimbursement for ICAN provisions found by the Commission to impose "costs mandated by the State", as defined in Government Code section 17514, upon local governmental 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 as to those matters I believe them to be true.

4/11/13, Los Angeles, CA  
Date and Place

*Leonard Kaye*  
Signature

**CBARCLAYS OFFICIAL CALIFORNIA CODE OF  
REGULATIONS  
TITLE 11. LAW  
DIVISION 1. ATTORNEY GENERAL  
CHAPTER 9. REPORT OF CHILD ABUSE  
ARTICLE 1. REPORT OF CHILD ABUSE**

This database is current through 11/20/09 Register 2009,  
No. 47

§ 901. Definitions.

(a) "Active Investigation" means the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, at a minimum: assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es) when appropriate and/or available; 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 investigating agency.

(b) "Audit Trail" is the method used by DOJ to track inquiries to ACAS to determine the requestor and the response provided. (See § 910)

(c) "Automated Child Abuse System" (ACAS) means the current system used by DOJ to electronically store reports of child abuse submitted by investigating agencies. ACAS is also known as the Index and the Child Abuse Central Index. Child Abuse Central Index and the Index are the same terms as used in Penal Code section 11170.

(d) "Child" is the same term as defined in Penal Code section 11165.

(e) "Child Abuse" is the same term as defined in Penal Code section 11165.6.

(f) "Confirmation" is the DOJ process of contacting the agency that submitted the report to confirm that the underlying investigative report is still available and is not unfounded. (See § 908)

(g) "DOJ" means the Department of Justice.

(h) "General Neglect" is the same term as used in Penal Code section 11165.2.

(i) "Inconclusive Report" is the same term as defined in Penal Code section 11165.12(c). This category was originally termed "unsubstantiated report" and was renamed by Chapter 842 of the Statutes of 1997, effective January 1, 1998.

(j) "Investigative 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.

(k) "Possible Match" means DOJ staff has checked a specific name as the result of an inquiry and has, based on the name and other items of personal description (date of birth, social security number, driver's license number, or address), matched that name to an existing report(s) in ACAS. The match is considered possible because it has not been confirmed absolutely with positive matching processes such as a fingerprint comparison.

(l) "Severe Neglect" is the same term as used in Penal Code section 11165.2.

(m) "Submitting Agency" means the agency that forwarded the completed summary report on which an ACAS entry is based.

(n) "Substantiated Report" is the same term as defined in Penal Code section 11165.12(b).

(o) "Summary Report" means an entry in ACAS reporting the investigation of a suspected incident of child abuse or severe neglect. All mandatory information as specified in regulation § 903 must be included for the report to be entered into ACAS. (See § 903)

(p) "Suspect" means a person who has been designated as a suspect in an agency's child abuse investigation and subsequently reported as such to DOJ.

(q) "Unfounded" is the same term as defined in Penal Code section 11165.12(a). Unfounded reports are not forwarded to DOJ for inclusion in the ACAS.

(r) "Unsubstantiated" means a report that is determined by a child abuse investigator not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect has occurred. (This category was renamed "inconclusive" by Chapter 842 of the Statutes of 1997, effective January 1, 1998).

(s) "Verification" means the process DOJ uses to insure that the data entered into ACAS is accurately entered into ACAS. (See§ 904)

(t) "Victim" means a person who has been designated as a victim in a child abuse investigative report and subsequently reported as such to DOJ.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 11170(a)(1), Penal Code.  
Reference: Sections 11165, 11165.2, 11165.6, 11165.9, 11165.12(a), 11165.12(b), 11165.12(c), 11169 and 11170(a), Penal Code; and Section 1596.60, Health and Safety Code.

#### HISTORY

1. New section filed 7-17-98; operative 7-17-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 29).
2. Amendment of section and Notefiled 4-22-2002; operative 5-22-2002 (Register 2002, No. 17).
3. Amendment filed 5-12-2006; operative 6-11-2006 (Register 2006, No. 19).  
11 CCR § 901, 11 CA ADC § 901

1CAC

11 CA ADC § 901  
END OF DOCUMENT



**CHILD ABUSE SUMMARY REPORT  
DEPARTMENT OF JUSTICE (DOJ) FORM SS 8583  
Guidelines for Use and Completion of Form SS 8583**

(For Specific Requirements Refer to the Child Abuse Reporting Law, California Penal Code Sections 11165 through 11174.3)

**For immediate information on potential suspects/victims, please contact the Child Abuse Unit at (916) 227-3285.**

**Who Must Report**

**Interagency Reporting**

Any police or sheriff's department, county welfare department, or county probation department (if designated by the county to receive mandated reports) must report every suspected incident of child abuse it receives to:

- the law enforcement agency having jurisdiction over the case
- the agency responsible for investigations under Welfare and Institutions Code Section 300
- the district attorney's office

**DOJ Reporting**

- An agency must report every incident of suspected child abuse for which it conducts an active investigation and determines not to be unfounded to DOJ on the Form SS 8583.

*NOTE: Reports are not accepted from non-California agencies.*

**What Incidents Must Not Be Reported**

**Interagency Reporting**

- Incidents specifically exempted under cooperative arrangements with other agencies in your jurisdiction.

**DOJ Reporting**

- Unfounded reports - Reports which are determined to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect as defined in Section 11165.6 PC (Section 11165.12 PC).
- Acts of nonexploitive, consensual sexual behavior between minors under the age of 14 years who are of similar age.
- Acts of negligence by a pregnant woman or other person(s) who adversely effect the well-being of a fetus.
- Child stealing as defined in Sections 277 PC and 278 PC, unless it involves sexual abuse, physical abuse, mental/emotional abuse, and/or severe neglect.
- Reasonable and necessary force by school employees to quell a disturbance threatening physical injury to person or damage to property (Section 11165.4 PC).
- Statutory rape, as defined in Section 261.5 PC, except violations of Section 261.5(d) PC.
- Mutual fights between minors (Section 11165.6 PC).

**What Incidents Must Be Reported**

- Abuse of a minor child, i.e., a person under the age of 18 years, involving any one of the below abuse types:

**Interagency Reporting**

- sexual abuse
- physical abuse
- general neglect
- mental/emotional abuse
- severe neglect

*(Refer to Section 11165.1 through 11165.6 PC for PC citations and definitions)*

**DOJ Reporting**

- All of the above, excluding general neglect.
- Deaths of minors resulting from abuse or neglect.

**When Must the Report Be Submitted**

**Interagency Reporting**

- Telephone notification - immediately or as soon as practical.
- Written notification - within 36 hours of receiving information concerning the incident.
- When an agency takes a report for which it lacks jurisdiction the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

**DOJ Reporting**

- A Form SS 8583 must be submitted after an active investigation has been conducted and the incident has been determined not to be unfounded. DOJ defines "active investigation" as: the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, 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 investigating agency.

*NOTE: No other form will be accepted in lieu of the Form SS 8583.*

The suspect(s) must be notified in writing that he/she has been reported to the Child Abuse Central Index per PC Section 11169(b).

**What Information is Required**

**General Instructions**

- All information blocks contained on the Form SS 8583 should be completed by the investigating agency. If information is not available, indicate "UNK" in the applicable information block.

**Specific Instructions**

INFORMATION BLOCKS ON THE FORM SS 8583 WHICH ARE SHADED GRAY MUST BE COMPLETED. **THE SUBMITTED FORM WILL BE RETURNED TO THE CONTRIBUTOR WITHOUT FURTHER DEPARTMENT OF JUSTICE ACTION IF THE CONTRIBUTOR FAILS TO COMPLETE ANY OF THE FOLLOWING ITEMS:** the agency name and type; the agency's report number or case name; the action taken by the investigating agency; the specific type of abuse; the victim's name, birthdate or approximate age, and gender; and the suspect's name and birthdate or approximate age, and gender. If the suspect is not known, UNKNOWN must be entered. Verification must be provided that an active investigation was conducted, that victim(s), and any known suspect(s), and witness(es) were contacted. An explanation must be provided if these contacts were not made. Verification must be provided that the suspect was given written notification that he/she has been reported to the Child Abuse Central Index per Section 11169(b) PC. An explanation must be provided if there was no notification.

Section A. "INVESTIGATING AGENCY," information block 10. "ACTION TAKEN" or 10A. "SUPPLEMENTAL INFORMATION" must be completed in accordance with the following definitions (Check one of the boxes):

<p><b>10. ACTION TAKEN</b> (check only one box):</p> <p><input type="checkbox"/> (1) SUBSTANTIATED (Abuse more likely than not to have occurred)</p> <p><input type="checkbox"/> (2) INCONCLUSIVE (Insufficient evidence of abuse, not unfounded)</p>	<p><b>10A. SUPPLEMENTAL INFORMATION</b> (Attach copy of original report)</p> <p><input type="checkbox"/> (a) INCONCLUSIVE</p> <p><input type="checkbox"/> (b) UNFOUNDED (false report, accidental, improbable)</p> <p><input type="checkbox"/> (c) ADDITIONAL INFORMATION</p>
---	---

**10. ACTION TAKEN**

- ① SUBSTANTIATED - Abuse, as defined in Section 11165.6 PC, determined to have more likely than not occurred.
- ② INCONCLUSIVE - Report determined not to be unfounded, but there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6 PC, occurred.

**10A. SUPPLEMENTAL INFORMATION** - Only use this section to update information previously submitted on Form SS 8583.

- Ⓐ INCONCLUSIVE - A previously submitted Form SS 8583 indicated as "SUBSTANTIATED" is being reclassified to "INCONCLUSIVE".
- Ⓑ UNFOUNDED - A previously submitted Form SS 8583 indicated as "SUBSTANTIATED," "UNSUBSTANTIATED," or "INCONCLUSIVE" is being reclassified to "UNFOUNDED."
- Ⓒ ADDITIONAL INFORMATION - Supplementary information is being provided for a previously submitted Form SS 8583.

**Where To Send The Report, Form SS 8583**

*(For DOJ reporting only)*

Department of Justice  
Bureau of Criminal Information and Analysis  
P. O. Box 903387  
Sacramento, CA 94203-3870  
ATTENTION: Child Abuse Unit

**REMEMBER**

Submit completed Form SS 8583 to DOJ as soon as possible after completion of the investigation because the case information may contribute to the success of another investigation. It is essential that the report be complete, accurate and timely to provide the maximum benefit in protecting children and identifying and prosecuting suspects. If you have questions about DOJ REPORTING or need a victim or suspect name check, call the DOJ Child Abuse Unit at (916) 227-3285 or CALNET 498-3285.

# **A Guide to Reporting Child Abuse to the California Department of Justice**



**2005**

*Division of California Justice Information Services  
Bureau of Criminal Information and Analysis  
Child Protection Program*

**BILL LOCKYER**  
Attorney General

## About this Guide

This guide is designed as a reference manual to assist individuals responsible for submitting the Child Abuse Investigative Report to the Department of Justice (DOJ).

The Attorney General's Child Protection Program (CPP) has prepared this guide to:

- Explain and define statutory requirements and responsibilities.
- Explain how to obtain child abuse information from DOJ.
- Assist agencies in complying with reporting requirements.

The Appendix contains forms used to request and report information; abbreviations, acronyms, and definitions; and a simplified chart showing how the process works.

Further information is available on the Attorney General website at:

<http://www.ag.ca.gov/childabuse/>

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## APPENDIX

Definitions, Abbreviations, and Acronyms

- Forms: SS 8583 - Child Abuse Investigation Report  
SS 8583 - Instruction Page  
SS 8572 - Suspected Child Abuse Report (SCAR)  
SS 8572 - Instruction Page  
BCIA 4084 - Facsimile Inquiry

Flowchart

# INTRODUCTION

The Child Abuse Central Index (Index) is a tool for state and local agencies to help protect the health and safety of California's children. The Index was created by the Legislature in 1965, and is defined in Penal Code (PC) sections 11164 through 11174.31. These statutes are referred to as the Child Abuse and Neglect Reporting Act (CANRA).

The Index reflects reports of investigations completed by child protection agencies, and is used to aid with investigations and prosecutions. Information from the Index is also provided to agencies to help screen applicants for licensing or employment in childcare facilities and foster homes, to aid in background checks for child placement and adoptions, as well as peace officer pre-employment checks.

The CPP administers the Index by processing information extracted from Child Abuse Investigation Report (Form SS 8583). The CPP updates information to, and disseminates information from, the Index to authorized agencies.

As a child protective agency investigator, you may contact the CPP to determine if another agency has submitted a report with information relating to suspects and/or victims in your current investigation. Likewise, child abuse investigators from other agencies may need information you have submitted. Therefore, the reports you submit are vitally important throughout California.

The CPP disseminates Index information, including notices of new child abuse investigation reports involving the same reported suspects and/or victims.

Information on file in the Index includes:

- Names and personal descriptors of the suspects and victims;
- Reporting agency that investigated the incident;
- The name and/or number assigned to the case by the investigating agency;
- Type(s) of abuse investigated; and
- The findings of an investigation for the incident, which are either substantiated or inconclusive. (See 11165.12 PC)

Each reporting agency is required by law to forward to the DOJ a summary of every child abuse incident it investigates, unless the incident is determined to be unfounded or of general neglect. Each reporting agency is responsible for the accuracy, completeness and retention of the investigative file that substantiates a report submitted to the DOJ.

## **REPORTING TO THE INDEX (Form SS 8583)**

### **11169 PC mandates reporting child abuse to the DOJ.**

Specifically, 11169 PC states "An agency specified in 11165.9 PC shall forward to the DOJ a report in writing of every case it investigates of known or suspected child abuse or severe neglect..."

Child abuse investigators who work for police and sheriff's departments, county welfare departments, and county probation departments must report to the DOJ all investigated cases of child abuse:

- 1) determined not to be unfounded, and
- 2) mandated by law to be reported (Refer to "What to Report" on page 9).

Reporting to DOJ is done once your investigation is complete.

The DOJ has prepared standardized forms for the reporting of child abuse. To help ensure the accuracy and completeness of your reports, the following is an explanation of each section of the Child Abuse Investigation Report (Form SS 8583):

### **GENERAL INSTRUCTIONS**

- For reporting to the DOJ, use current Form SS 8583 only.
- All shaded areas on Form SS 8583 are mandatory fields. Print clearly or type.
- All information blocks should be completed by the Child Abuse Investigator (law enforcement and/or child protection agencies).
- To allow complete reporting to DOJ, mark "UK" in any field for which information is unknown or not available.
- Incomplete forms submitted to DOJ may be returned for correction. Ensure accurate and timely resubmission of forms returned to your agency.
- If you have any questions about completing the Form SS 8583, please contact the DOJ at (916) 227-3285.

# FILLING OUT THE FORM SS 8583

*TO BE TYPED OR PRINTED - PRESS FIRMLY - DO NOT USE FELT PEN*

<b>CHILD ABUSE INVESTIGATION REPORT</b>		R C M  A G E N C Y	FOR DOJ USE ONLY	
To be Completed by Investigating Child Protective Agency Pursuant to Penal Code Section 11169 <b>(SHADED AREAS MUST BE COMPLETED)</b>				
A. INVESTIGATING AGENCY	1. INVESTIGATING AGENCY (Enter complete name and check type):		2. AGENCY REPORT NO./CASE NAME:	
	<input type="checkbox"/> POLICE <input type="checkbox"/> WELFARE <input type="checkbox"/> SHERIFF <input type="checkbox"/> PROBATION			
	3. AGENCY ADDRESS: Street City Zip Code		4. AGENCY TELEPHONE: EXT: ( )	
	5. NAME OF INVESTIGATING PARTY: TITLE		6. DATE REPORT COMPLETED: MO DA YR	
	7. AGENCY CROSS-REPORTED TO:		8. DATE CROSS-REPORTED: MO DA YR	
	8. PERSON CROSS-REPORTED TO:			
	10. ACTION TAKEN (check only one box):		10A. SUPPLEMENTAL INFORMATION (Attach copy of original report)	
	<input type="checkbox"/> (1) SUBSTANTIATED (Credible evidence of abuse) <input type="checkbox"/> (2) INCONCLUSIVE (Insufficient evidence of abuse, not unfounded)		<input type="checkbox"/> (a) NONCONCLUSIVE <input type="checkbox"/> (c) ADDITIONAL INFORMATION <input type="checkbox"/> (b) UNFOUNDED (false report, accidental, improbable)	
	11. Active investigation conducted per PC 11102(a)? <input type="checkbox"/> Yes <input type="checkbox"/> No*    Victim(s) contacted? <input type="checkbox"/> Yes <input type="checkbox"/> No*    Suspect(s) contacted? <input type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> No Subjects		Witness(es) contacted? <input type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> No witnesses    *Explain in comments field A. 12.	
	12. COMMENTS:			

## Section A. Investigating Agency

(Items in bold are mandatory data elements.)

### 1. Name and Type of Investigating Agency

Fill in the name of your agency and check box for appropriate type, whether police, sheriff, welfare or probation.

### 2. Agency Report Number/Case Number

Fill in your report number and/or the name you've assigned to the case.

### 3. Agency Address

Fill in the complete address of your agency.

### 4. Agency Telephone and Extension

Fill in either your telephone number and extension number or a number where an investigator can locate the records.

### 5. Name of Investigating Party and Title

Fill in your name and title.

### 6. Date Report Completed

Fill in date of actual completion of Form SS 8583.

7. Agency Cross-reported to

If cross-reporting was required, fill in the name of the CPA you notified about report of suspected child abuse.

8. Person Cross-reported to

Fill in the name of the person you notified about report of suspected child abuse.

9. Date Cross-reported

Fill in actual date you notified the CPA about report of suspected child abuse.

10. Action Taken

Only one action per Form SS 8583 can be submitted. The options are;

- a) Substantiated finding (abuse more likely than not occurred), or
- b) Inconclusive finding (insufficient evidence of abuse, but not unfounded).

10. A. Supplemental information

Use this section if you have previously completed and submitted to DOJ a Form SS 8583, and you want to report additional significant information. Complete information blocks 1 through 5 in Section A; and the following pertinent information blocks pertaining to the additional information:

- a) You are modifying your initial findings, or
- b) You are reporting additional facts discovered during your investigation that are significant to the case. Fill in appropriate information blocks on form (e.g., addition or deletion of suspects or victims). Attach a copy of the Original Form SS 8583.

11. Active Investigation conducted per 11169(a) PC...

(...and if victims, suspect and witnesses were contacted).

In a completed active investigation, the suspects and witnesses would be contacted and interviewed. If you were unable to notice the suspect of this investigation, place explanation in the Comments field (A-12).

NOTE: an active investigation is critical and that in order to comply with the DOJ Regulations, you must complete an active investigation.

12. Comments

If you are submitting a supplemental Form SS 8583, you can describe the reason for submitting this here.

If you were unable to contact suspect for any reason, enter the reason here.

Please contact the CPP if you have any questions concerning meeting the requirements of an "active investigation."

<b>B. INCIDENT INFORMATION</b>	1. DATE OF INCIDENT: MO DA YR	2. TIME OF INCIDENT:	3. LOCATION OF INCIDENT:	
	4. NAME OF PARTY REPORTING INCIDENT: TITLE:	5. EMPLOYER:		6. TELEPHONE: ( )
	7. TYPE OF ABUSE (check one or more): <input type="checkbox"/> (1) PHYSICAL <input type="checkbox"/> (2) MENTAL <input type="checkbox"/> (3) SEXUAL <input type="checkbox"/> (4) SEVERE NEGLECT <input type="checkbox"/> (5) GENERAL NEGLECT			
	8. ABUSE OCCURRED IN OUT-OF-HOME CARE. CHECK TYPE: <input type="checkbox"/> (1) FAMILY DAY CARE <input type="checkbox"/> (2) CHILD CARE CENTER <input type="checkbox"/> (3) FOSTER FAMILY HOME <input type="checkbox"/> (4) SMALL FAMILY HOME			
	<input type="checkbox"/> (5) GROUP HOME OR INSTITUTION (Entry name and address)			

**Section B. Incident Information**

(Items in bold are mandatory data elements.)

1. **Date of Incident**

Fill in date the incident occurred. If you only know the month and year, and not the date, submit using the following example format: 02/00/1998.

2. **Time of Incident**

Fill in time the incident occurred.

3. **Location of Incident**

Fill in address and description of premises where incident occurred.

4. **Name of Party Reporting Incident**

This is the person who has contacted the CPA to report the suspected abuse. Remember, if you are the investigating party, you will list that information in Section A. Law Enforcement and Child Protection Services should not be listed in this section as the reporting party.

5. **Employer**

Pertains to person listed in #4.

6. **Telephone**

Pertains to person listed in #4.

7. **Type of Abuse**

Check the type of abuse. You may check one or more, as appropriate. The types of abuse captured are Physical, Mental, Sexual and Severe Neglect. General Neglect is only listed here and available as a selection when submitting a supplemental report, if applicable.

8. **If Abuse occurred in Out-of-Home Care, check type**

The types are: Family Day Care, Child Care Center, Foster Family Home, Small Family Home or Group Home or Institution.

VICTIMS	1. NAME: Last First Middle AKA				DOB	MO	DA	YR	APPROX. AGE:	<input type="checkbox"/> MALE	<input type="checkbox"/> FEMALE	RACE	
	ADDRESS: Street City Zip Code				DID VICTIM'S INJURIES RESULT IN DEATH? <input type="checkbox"/> YES <input type="checkbox"/> NO								
	PRESENT LOCATION OF VICTIM:				TELEPHONE NUMBER:				NATURE OF INJURIES:				
									IS VICTIM DEVELOPMENTALLY DISABLED (4512(b) WAJ)? <input type="checkbox"/> YES <input type="checkbox"/> NO				
VICTIMS	2. NAME: Last First Middle AKA				DOB	MO	DA	YR	APPROX. AGE:	<input type="checkbox"/> MALE	<input type="checkbox"/> FEMALE	RACE	
	ADDRESS: Street City Zip Code				DID VICTIM'S INJURIES RESULT IN DEATH? <input type="checkbox"/> YES <input type="checkbox"/> NO								
	PRESENT LOCATION OF VICTIM:				TELEPHONE NUMBER:				NATURE OF INJURIES:				
									IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) WAJ)? <input type="checkbox"/> YES <input type="checkbox"/> NO				

**C. Involved Parties**

**Victims**

**(This section allows for the entry of two victims.)**

**(Items in bold are mandatory data elements.)**

**Name, A.K.A., DOB, Sex, Race**

- **Name of Victim:** This includes nicknames or other names used, such as maiden names.
- **DOB:** Fill in the victim's date of birth. (This is important to establish victim as a minor at the time of the abuse.)
- **Sex:** Check appropriate box to indicate whether victim is male or female.
- **Race:** Refer to race types on bottom of reporting form.

**Address:** Fill in complete address of victim.

**Did victim's injuries result in death?**

Check appropriate box.

**Nature of Injuries:**

Describe injuries (e.g., broken bones, burns, bruises). If this information is uncovered once a report has initially been submitted, a supplemental report should be submitted responding to this question.

**Present location of victim:**

Fill in victim's current location, including the phone number.

**Is victim Developmentally Disabled?**

Refer to Welfare & Institutions Code, section 4512(a) for definition, and check appropriate box.

C. INVOLVED PARTIES SUSPECTS	1 NAME: Last First Middle AKA													D M YR		MO DA		AGE: APPROX		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		R A C E	#	
	ADDRESS: Street City Zip Code				HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER			DRIVER'S LICENSE NUMBER												
	RELATIONSHIP TO VICTIM													<input type="checkbox"/> (1) PARENT/STEPARENT		<input type="checkbox"/> (2) SIBLING		<input type="checkbox"/> (3) OTHER RELATIVE		<input type="checkbox"/> (4) FRIEND/ACQUAINTANCE		<input type="checkbox"/> (5) STRANGER		
	Suspect given written notice per PC 11169(b)													MO		DA		YR		If notice not given, explain in comments field A.12.				
<input type="checkbox"/> Yes <input type="checkbox"/> No													Date notice given:											
	2 NAME: Last First Middle AKA													D M YR		MO DA		AGE: APPROX		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		R A C E	#	
	ADDRESS: Street City Zip Code				HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER			DRIVER'S LICENSE NUMBER												
	RELATIONSHIP TO VICTIM													<input type="checkbox"/> (1) PARENT/STEPARENT		<input type="checkbox"/> (2) SIBLING		<input type="checkbox"/> (3) OTHER RELATIVE		<input type="checkbox"/> (4) FRIEND/ACQUAINTANCE		<input type="checkbox"/> (5) STRANGER		
	Suspect given written notice per PC 11169(b)													MO		DA		YR		If notice not given, explain in comments field A.12.				
<input type="checkbox"/> Yes <input type="checkbox"/> No													Date notice given:											

**C. Involved Parties (Continued)**

**Suspects**

(This section allows for the entry of two suspects)

(Items in bold are mandatory data elements.)

**Name, A.K.A., DOB, Sex, Race**

- Fill in complete name of suspect, including any nicknames or other names used, such as maiden names. If all, or any part of the suspect's name is unknown or not available, indicate by writing "UK."
- Fill in the complete date of birth of the suspect
- Check appropriate box to indicate whether suspect is male or female.
- Fill in the race of the suspect. Codes appear at the bottom of the reporting form.

**Address, Height, Weight, Eyes, Hair, Social Security Number**

- Fill in the complete address, height, weight, eye color, hair color and social security number and drivers license number of the suspect, if known. If not known, you may provide comments.

**Relationship to Victim** - Check box the appropriate category:

- parent or stepparent of victim
- brother or sister of victim
- other relative of victim
- friend or acquaintance of victim
- stranger or unknown to victim

**Suspect given written notice per 11169 (b) PC**

- Respond Yes or No and the date notice given. If notice was not given, explanation must be provided in Comment field (A-12).

<b>OTHER</b>	1. NAME:	Last	First	Middle	<input type="checkbox"/> (1) PARENT/STEPARENT	D O B	MO	DA	YR	APPROX	<input type="checkbox"/> MALE	RCN
					<input type="checkbox"/> (2) SBLING					AGE:	<input type="checkbox"/> FEMALE	
	2. NAME:	Last	First	Middle	<input type="checkbox"/> (1) PARENT/STEPARENT	D O B	MO	DA	YR	APPROX	<input type="checkbox"/> MALE	RCN
					<input type="checkbox"/> (2) SBLING					AGE:	<input type="checkbox"/> FEMALE	

\*RACE CODES: W-White, B-Black, N-Hispanic, I-American Indian, F-Filipino, P-Pacific Islander, C-Chinese, J-Japanese, A-Other Asian, Z-Asian Indian, D-Cambodian, G-Guamanian, U-Hawaiian, K-Korean, L-Latvian, S-Samoan, V-Vietnamese, O-Other, X-Unknown

CHECK HERE IF ADDITIONAL SHEET(S) IS ATTACHED.

SS 8583 (Rev. 5/02) PINK COPY-DOJ; WHITE COPY-Police or Sheriff; BLUE COPY-County Welfare or Probation; GREEN COPY-District Attorney's Office

**C. Involved Parties (Continued)**

**Other**

(This section allows for entry of two additional involved parties.)

- Name, Relationship, Date of Birth or approximate age, Sex, and Race

This section includes anyone else who was involved in the incident, but is neither a victim nor suspect.

Check here if additional sheet(s) is attached.

At the bottom of the form is a box to check if you are attaching additional information. If checked, this box alerts CPP staff to look for attachments. If there are more than two names for any of the above-mentioned areas; an additional page can be submitted attached to the original SS 8583 report.

Notate the RCN listed on the initial report, and include case number and date of report.

## **WHAT TO REPORT**

**11169(a) PC mandates the reporting of specific types of child abuse.**

The basic categories of reportable child abuse are sexual, physical, severe neglect and willful harming or endangering (which includes mental abuse). Listed below are the statutory references and definitions thereof.

### **Sexual Abuse as defined in 11165.1 PC includes all of the following:**

1. Rape (261 PC and 264.1 PC)
2. Incest (285 PC)
3. Sodomy (286 PC)
4. Lewd and lascivious acts upon body of child under 14 [288(a)(b) PC]
5. Oral copulation [288(a) PC]
6. Penetration of genital or anal openings by foreign object (289 PC)
7. Child molesting (647.6 PC)
8. Certain other sexual acts [11165.1(b) PC] including:
  - a. Penetration of vagina or anus by penis.
  - b. Sexual contact between genitals or anus by mouth or tongue.
  - c. Intrusion into genitals or anus by any object.
  - d. Intentional touching or genitals or intimate parts to arouse or gratify.
  - e. Intentional masturbation of perpetrator's genitals in child's presence.
9. Sexual Exploitation to include:
  - a. Sending/bringing into state for sale/distribution matter depicting sexual conduct by minors (311.2 PC)
  - b. Employment of minor to perform prohibited acts [311.4 (a) PC]
  - c. Depicting by film, photograph, videotape, etc. sexual conduct by person under 14 [311.4(a) PC]
  - d. Aiding, promoting, coercing, etc., a child to perform obscene sexual acts for the purpose of producing pictorial depictions (311.3 PC)

### **Physical Abuse as defined in 11165.4 PC includes all of the following:**

1. Unlawful corporal punishment or injury (11165.4 PC)
2. Any acts or omissions cited in 273a PC and 273d PC

### **Severe Neglect as defined in 11165.2 PC**

The child's welfare has been risked or endangered or has been ignored to a point that the child has failed to thrive. Generally, the standard is that a child has been physically harmed or that a very high probability exists that acts or omissions by responsible person would lead to physical harm.

### **Willful harming or endangering (which includes mental abuse) as defined in 11165.3 PC**

The infliction of mental/emotional suffering. Although 11166(b) PC allows mandated reporters discretion of whether or not to report to you, you must still report to DOJ.

### **Child Death referenced in 11174.35 PC**

Report any deaths resulting from physical abuse, evidence of prior physical abuse or severe neglect. If the death occurs after the initial Form SS 8583 is submitted, you must submit a supplemental Form SS 8583 indicating the change to your initial report.

# WHAT NOT TO REPORT

11169(a) PC identifies what may not be reported to DOJ.

## Sexual

1. Statutory Rape, as defined in section 261.5 PC, except section 261.5(d) PC .
2. Acts of consensual sexual behavior between children under 14 who are of a similar age; or, acts of unlawful sexual intercourse (statutory rape) (261.5 PC).

## Physical

1. Incidents of accidental injury or injuries.
2. Reasonable force by public school employee to stop violent disturbance or to exercise physical control. (11165.4 PC, Education Code sections 44807 and 49001)
3. Mutual fights between minors. (11165.6 PC)

## Neglect

1. General Neglect, which means that the person responsible for the child's welfare has failed to provide adequate care but has not physically injured the child.
2. Fetal abuse. Fetal abuse may include adversely affecting the well-being of an unborn child and evidence of illegal drugs or alcohol in just-born infant.

## Child stealing unless it involves child abuse

### Unfounded Reports

Reasons for unfounded reports as defined in 11169 PC, may include false reporting, improbable incidents, accidents, and events that do not constitute child abuse as defined by law.

### If you have not conducted an Active Investigation

"Active Investigation" per DOJ regulations Title 11 California Administrative Code, section 901(a) means the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, suspected abuse; Active Investigation" means the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, suspected abuse; conducting interview 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 investigating agency.

### If you have not contacted the suspect

This does not apply if you were unable to locate the suspect or another agency (i.e. law enforcement) has asked you not to notify the suspect. Please use the Comment field to identify the reason suspect was not contacted.

## WHEN TO REPORT

Send Form SS 8583 to DOJ after;

- a) you've made investigative contacts,
- b) determined that the child abuse report was not unfounded,
- c) confirmed that the suspected abuse or neglect is reportable to the DOJ as stipulated in previously mentioned statutes,
- d) and completed the investigation.

11166(j) PC requires the cross-reporting by phone immediately, and by mail within 36 hours of receiving a report of suspected child abuse from a mandated reporter or from a citizen. You may use either Forms SS 8572 or SS 8583 to cross-report.

The 36-hour cross-reporting requirement does not apply to DOJ reporting requirements. For DOJ reporting purposes, you must submit the required Form SS 8583 once you have completed your investigation.

## WHERE TO SEND THE REPORT

Mail the completed, original Form SS 8583 to:

Department of Justice  
Bureau of Criminal Information and Analysis  
Child Protection Program  
P.O. Box 903387  
Sacramento, CA 94203-3870

## **RETENTION OF INVESTIGATIVE FILES**

Sections 11170 PC and 11169 PC govern the retention of child abuse reports in the Index and affect the retention of reports by local investigative agencies.

### **1) Agency Retention Requirements**

11169(c) PC establishes a basic requirement for agency retention of information.

"Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the DOJ for the same period of time that the information is required to be maintained on the Index... Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law."

### **2) DOJ Retention Requirements**

11170(a)(3) PC allows for a 10 year purge for Inconclusive Reports.

"The Department of Justice shall delete *unsubstantiated* or *inconclusive* child abuse investigation reports from the Child Abuse Central Index after ten years...."

This is true only if the suspect of a report is not linked to a subsequent report. When a suspect of an Index report is linked to a subsequent report, the ten years commence from the date of receipt of the most recent report. (Originating agency will be notified via mail, by DOJ, when this occurs.)

There is no statutory or regulatory authority for the DOJ to purge information from the Index relating to a child abuse investigation if the finding of that investigation was substantiated. Therefore, investigating agencies must maintain their investigative files of substantiated child abuse investigations permanently.

## **INQUIRIES TO THE INDEX**

### **11170 PC governs access to Index Information.**

The Index contains pertinent information from investigated reports of suspected child abuse and offers information not found in the state criminal history system that are derived from arrest and conviction data.

Information relayed by us is intended to direct you to information held by other agencies. We do not conduct investigations and do not have complete investigative files. We are a pointer system to the agency with the investigative file.

### **HOW TO ACCESS INFORMATION**

There are three ways to request Index information. Authorized agencies may access Index information via fax, teletype, or US mail.

#### **1. Fax Inquiries**

##### **A. Submitting Your Request:**

Index inquiries will be processed via facsimile request under the following circumstances:

- Placement Of Child In Emergency Situation
- Care-Taker For Ward Of Court Or Dependent Child\*
- Guardianship\*
- Investigation Of Current Allegation Of Child Abuse\*

Use Form BCIA 4084 for this purpose. Please indicate if you would like your response returned by telephone or by fax by circling the appropriate return phone/fax number.

Fax your inquiry request to:

Department of Justice, Child Protection Program

Fax number: (916) 227-5054

(After 4:30 p.m. on weekdays, and weekends and holiday fax requests will be automatically referred to the DOJ Command Center, which will provide the same service.)

##### **B. Responses To Your Request**

Searches resulting in a no match, and those possible matches not requiring confirmation, will generate a reply within two hours. Replies on inquiries requiring confirmation may be delayed up to 30 thirty days while DOJ contacts the reporting agency to confirm the availability and accuracy of the original report.

C. Obtaining The Form

The Form BCIA 4084 can be faxed to your agency or you may request an electronic copy. Please contact DOJ/ CPP with your electronic mailing address.

\* Possible matches with an existing Index record will require confirmation prior to the release of information.

2. Teletype

To access the Index via the California Law Enforcement Telecommunications System (CLETS), authorized agencies should use the following example as a format:

[Mnemonic for the Department of Justice: DOJ ]

ATTENTION: Child Abuse Unit

SUBJECT: Child Abuse Central Index check for the below listed subjects.

TYPE OF INVESTIGATION: Physical

Name of Subject	Sex	Race	DOB	Subject Status
JONES, Dorothy Louise	F	W	010185	V (Victim)
JONES, William Robert	M	W	020246	S (Suspect)
JONES, Louise Ann	F	W	030347	S

REFER: Detective Joe Watkins, Child Abuse Unit Mnemonic YB

AGENCY: Los Angeles County Sheriff's Office

Responses to teletype requests will be returned via teletype unless otherwise specified.

3. US Mail

Agencies may request information via the US Mail. Complete Form BCIA 4084, and mail to DOJ/BCIA/ CPP, P.O. Box 903387, Sacramento, CA 94203-3870.

# APPENDIX

## Definition of Terms

**Active Investigation** - the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, at a minimum: assessing the nature and seriousness of the known or 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 investigating agency.

**Automated Child Abuse System (ACAS)** - the current system used by DOJ to electronically store reports of child abuse incidents submitted by investigating agencies. Also known as the Index and CACI.

**Child** - person who was a victim under the age of 18 at the time of the alleged abuse.

**Child Abuse** - is the same term as defined in Penal Code section 11165.6, which states the term "child abuse or neglect" includes physical injury inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

**Child Abuse Central Index** - also known as CACI, Index, and ACAS.

**Child Protective Agency (CPA)** - is the investigating agency, which includes a police department, a sheriff's department, a county welfare department, or a county probation department.

**Child Protective Agency Investigator** - is a person employed by a child abuse investigative agency who is responsible for inquiring into the details of a report of suspected child abuse. (NOTE: Throughout this guide the use of the term "investigator" shall mean a child abuse agency investigator.)

**Child Protection Program** - also known as CPP, is the unit within the DOJ responsible for the maintenance of the Index.

**CLETS** - California Law Enforcement Telecommunications System.

**Confirmation** - the DOJ process of contacting the agency that submitted the report to confirm that the investigative file is still available and is not unfounded.

**DOJ** - Department of Justice.

**General Neglect** - is the same term as used in Penal Code section 11165.2(b) means the negligent failure of a person having the care or custody of a child to provide adequate food,

clothing, shelter, medical care, or supervision where no physical injury to the child has occurred. This is not reportable to DOJ.

**Inconclusive Report** - is the same term as defined in Penal Code section 11165.12(c). This category was originally termed "unsubstantiated report" and was renamed by Chapter 842 of the Statutes of 1997 and became effective January 1, 1998. Inconclusive as defined means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

**Index** - is the same term as used in Penal Code section 11170(a). The Index is currently known as the Automated Child Abuse System (ACAS).

**Investigative File or Underlying Investigative File** - is the 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.

**Possible Match** - this is when DOJ staff have checked a specific name as the result of an inquiry and has, based on the name and other items of personal description (date of birth, social security number, driver's license number, or address), matched that name to an existing report(s) in ACAS. The match is considered possible because it has not been confirmed absolutely with positive matching processes such as a fingerprint comparison.

**Report** - an entry in ACAS reporting the investigation of a suspected incident of child abuse. All mandatory information as specified in Title 11, section 903 of the California Code of Regulations must be included for the report to be entered into ACAS.

**Severe Neglect** - is the same term as used in Penal Code section 11165.2, which states; the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

**Submitting Agency** - the agency that forwarded the completed report on which an ACAS entry is based.

**Substantiated** - an investigator has determined based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred. Definition in Penal Code section 11165.12 (b), amended on January 1, 2005.

**Suspect** - a person who has been designated as a suspect in an agency's child abuse investigation and subsequently reported as such to DOJ.

**Unfounded** - an investigator has determined, based on facts, that there was no child abuse. Penal Code section 11165.12 states: "unfounded means . . . to be false, to be inherently improbable, to involve an accidental injury.

**Victim** - a person who has been designated as a victim in a child abuse investigation report and subsequently reported as such to DOJ.

# APPENDIX

# CHILD ABUSE INVESTIGATION REPORT

To be Completed by Investigating Child Protective Agency  
Pursuant to Penal Code Section 11169  
(SHADED AREAS MUST BE COMPLETED)

R  
C  
N  
  
A  
G  
Y

FOR DOJ USE ONLY

<b>A. INVESTIGATING AGENCY</b>	1. INVESTIGATING AGENCY (Enter complete name and check type)		POLICE	WELFARE	2. AGENCY REPORT NO./CASE NAME:	
			SHERIFF	PROBATION		
	3. AGENCY ADDRESS: Street City Zip Code			4. AGENCY TELEPHONE: EXT. ( )		
	5. NAME OF INVESTIGATING PARTY: TITLE			6. DATE REPORT COMPLETED: MO DA YR		
	7. AGENCY CROSS-REPORTED TO:		8. PERSON CROSS-REPORTED TO:		9. DATE CROSS-REPORTED: MO DA YR	
	10. ACTION TAKEN (check only one box): (1) SUBSTANTIATED (Credible evidence of abuse) (2) INCONCLUSIVE (Insufficient evidence of abuse, not unfounded)			10A. SUPPLEMENTAL INFORMATION (Attach copy of original report) (a) INCONCLUSIVE (c) ADDITIONAL INFORMATION (b) UNFOUNDED (false report, accidental, improbable)		
11. A clive investigation conducted per PC 11169(a)? Yes No* Victim(s) contacted? Yes No* Suspect(s) contacted? Yes No* No Suspects Witness(es) contacted? Yes No* No witnesses *Explain in comments field A.12.						
12. COMMENTS:						

<b>B. INCIDENT INFORMATION</b>	1. DATE OF INCIDENT: MO DA YR		2. TIME OF INCIDENT:		3. LOCATION OF INCIDENT:	
	4. NAME OF PARTY REPORTING INCIDENT: TITLE:			5. EMPLOYER:		6. TELEPHONE: ( )
	7. TYPE OF ABUSE (check one or more): (1) PHYSICAL (2) MENTAL (3) SEXUAL (4) SEVERE NEGLECT (5) GENERAL NEGLECT					
	8. IF ABUSE OCCURRED IN OUT-OF-HOME CARE, CHECK TYPE (1) FAMILY DAY CARE (2) CHILD CARE CENTER (3) FOSTER FAMILY HOME (4) SMALL FAMILY HOME (5) GROUP HOME OR INSTITUTION-Enter name and address:					

<b>C. INVOLVED PARTIES</b>	<b>VICTIMS</b>	1. NAME: Last First Middle AKA		DOB	MO	DA	YR	APPROX. AGE:	MALE	RACE	*	
		ADDRESS: Street City Zip Code		DID VICTIM'S INJURIES RESULT IN DEATH? YES NO		NATURE OF INJURIES:						
		PRESENT LOCATION OF VICTIM:		TELEPHONE NUMBER:		IS VICTIM DEVELOPMENTALLY DISABLED [4512(a) W&I]? YES NO						
		2. NAME: Last First Middle AKA		DOB	MO	DA	YR	APPROX. AGE:	MALE	RACE	*	
		ADDRESS: Street City Zip Code		DID VICTIM'S INJURIES RESULT IN DEATH? YES NO		NATURE OF INJURIES:						
	PRESENT LOCATION OF VICTIM:		TELEPHONE NUMBER:		IS VICTIM DEVELOPMENTALLY DISABLED [4512(a) W&I]? YES NO							
	<b>SUSPECTS</b>	1. NAME: Last First Middle AKA		DOB	MO	DA	YR	APPROX. AGE:	MALE	RACE	*	
		ADDRESS: Street City Zip Code		HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER:	DRIVER'S LICENSE NUMBER:			
		RELATIONSHIP TO VICTIM: (1) PARENT/STEPPARENT (2) SIBLING (3) OTHER RELATIVE (4) FRIEND/ACQUAINTANCE (5) STRANGER										
		Suspect given written notice per PC 11169(b) MO DA YR Yes No Date notice given If notice not given, explain in comments field A.12.										
2. NAME: Last First Middle AKA		DOB	MO	DA	YR	APPROX. AGE:	MALE	RACE	*			
ADDRESS: Street City Zip Code		HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER:	DRIVER'S LICENSE NUMBER:					
RELATIONSHIP TO VICTIM: (1) PARENT/STEPPARENT (2) SIBLING (3) OTHER RELATIVE (4) FRIEND/ACQUAINTANCE (5) STRANGER												
Suspect given written notice per PC 11169(b) MO DA YR Yes No Date notice given If notice not given, explain in comments field A.12.												
<b>OTHER</b>	1. NAME: Last First Middle		(1) PARENT/STEPPARENT		DOB	MO	DA	YR	APPROX. AGE:	MALE	RACE	*
			(2) SIBLING									
2. NAME: Last First Middle		(1) PARENT/STEPPARENT		DOB	MO	DA	YR	APPROX. AGE:	MALE	RACE	*	
		(2) SIBLING										

RACE CODES: W-White, B-Black, H-Hispanic, I-American Indian, F-Filipino, P-Pacific Islander, C-Chinese, J-Japanese, A-Other Asian, Z-Asian Indian, D-Cambodian, G-Guyanese, U-Hawaiian, K-Korean, L-Latino, S-Samoan, V-Vietnamese, O-Other, X-Unknown  
CHECK HERE IF ADDITIONAL SHEET(S) IS ATTACHED.

SS 8583 (Rev. 5/02) PINK COPY-DOJ; WHITE COPY-Police or Sheriff; BLUE COPY-County Welfare or Probation; GREEN COPY-District Attorney's Office

**CHILD ABUSE INVESTIGATION REPORT  
DEPARTMENT OF JUSTICE (DOJ) FORM SS 8583  
Guidelines for Use and Completion of Form SS 8583**

(For Specific Requirements Refer to the Child Abuse Reporting Law, California Penal Code Section 11165 through 11174.5)

**For immediate information on potential suspects/victims, please contact the Child Abuse Unit at (916) 227-3285.**

**Who Must Report**

**Interagency Reporting**

- Any police or sheriff's department, county welfare department, or county probation department (if designated by the county to receive mandated reports) must report every suspected incident of child abuse it receives to:
  - the law enforcement agency having jurisdiction over the case
  - the agency responsible for investigations under Welfare and Institutions Code Section 300
  - the district attorney's office

**DOJ Reporting**

- An agency must report every incident of suspected child abuse for which it conducts an active investigation and determines not to be unfounded to DOJ on the Form SS 8583.

*NOTE: Reports are not accepted from non-California agencies.*

**What Incidents Must Not Be Reported**

**Interagency Reporting**

- Incidents specifically exempted under cooperative arrangements with other agencies in your jurisdiction.

**DOJ Reporting**

- Unfounded reports - Reports that are determined to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6 PC (Section 11165.12 PC).
- Acts of nonexploitive, consensual sexual behavior between minors under the age of 14 years who are of similar age.
- Acts of negligence by a pregnant woman or other person(s) which adversely affect the well-being of a fetus.
- Past abuse of a child who is an adult at the time of disclosure.
- Child stealing, as defined in Sections 277 PC and 278 PC, unless it involves sexual abuse, physical abuse, mental/emotional abuse, and/or severe neglect.
- Reasonable and necessary force by school employees to quell a disturbance threatening physical injury to person or damage to property (Section 11165.4 PC).
- Statutory rape, as defined in Section 261.5 PC, except Section 261.5(d) PC (Statutes of 1997).
- Mutual fights between minors (Section 11165.6 PC).

**What Incidents Must Be Reported**

- Abuse of a minor child, i.e., a person under the age of 18 years, involving any one of the below abuse types:

**Interagency Reporting**

- sexual abuse
- physical abuse
- general neglect
- mental/emotional abuse
- severe neglect

*(Refer to Section 11165.1 through 11165.6 PC for citations and definitions)*

**DOJ Reporting**

- All of the above, excluding general neglect.
- Deaths of minors resulting from abuse or neglect.

**When Must the Report be Submitted**

**Interagency Reporting**

- Telephone notification - immediately or as soon as practical.
- Written notification - within 36 hours of receiving information concerning the incident.
- When an agency takes a report for which it lacks jurisdiction the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

**DOJ Reporting**

- A Form SS 8583 must be submitted after an active investigation has been conducted and the incident has been determined not to be unfounded. DOJ defines "active investigation" as: the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, 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 investigating agency.

*NOTE: No other form will be accepted in lieu of the Form SS 8583.*

The suspect(s) must be notified in writing that he/she has been reported to the Child Abuse Central Index per PC Section 11169(b).

**What Information is Required**

**General Instructions**

- All information blocks contained on the Form SS 8583 should be completed by the investigating agency. If information is not available, indicate "UNK" in the applicable information block.

**Specific Instructions**

INFORMATION BLOCKS ON THE FORM SS 8583 WHICH ARE SHADED GRAY MUST BE COMPLETED. **THE SUBMITTED FORM WILL BE RETURNED TO THE CONTRIBUTOR WITHOUT FURTHER DEPARTMENT OF JUSTICE ACTION IF THE CONTRIBUTOR FAILS TO COMPLETE ANY OF THE FOLLOWING ITEMS:** the agency name and type, the agency's report number or case name; the action taken by the investigating agency; the specific type of abuse; the victim's name, birthdate or approximate age, and gender, and the suspect's name and birthdate or approximate age, and gender. If the suspect is not known, UNKNOWN must be entered. Verification must be provided that an active investigation was conducted, that victim(s), and any known suspect(s), and witness(es) were contacted. An explanation must be provided if these contacts were not made. Verification must be provided that the suspect was given written notification that he/she has been reported to the Child Abuse Central Index per Section 11169(b) PC. An explanation must be provided if there was no notification.

Section A, "INVESTIGATING AGENCY," information block 10, "ACTION TAKEN" or 10A, "SUPPLEMENTAL INFORMATION" must be completed in accordance with the following definitions (Check one of the boxes):

<p><b>10. ACTION TAKEN (check only one box):</b></p> <p>(1) <b>SUBSTANTIATED</b> (Credible evidence of abuse)</p> <p>(2) <b>INCONCLUSIVE</b> (Insufficient evidence of abuse, not unfounded)</p>	<p><b>10A. SUPPLEMENTAL INFORMATION (Attach copy of original report)</b></p> <p>(a) <b>INCONCLUSIVE</b></p> <p>(b) <b>UNFOUNDED</b> (false report, accidental, improbable)</p> <p>(c) <b>ADDITIONAL INFORMATION</b></p>
--	---

**10. ACTION TAKEN**

- 1 **SUBSTANTIATED** - Acts determined, based upon some credible evidence, to constitute child abuse or neglect, as defined in Section 11165.6 PC.
- 2 **INCONCLUSIVE** - Acts determined not to be unfounded, but there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6 PC, has occurred.

**10A. SUPPLEMENTAL INFORMATION** - Only use this section to update information previously submitted on Form SS 8583.

- a **INCONCLUSIVE** - A previously submitted Form SS 8583 indicated as "SUBSTANTIATED" is being reclassified to "INCONCLUSIVE."
- b **UNFOUNDED** - A previously submitted Form SS 8583 indicated as "SUBSTANTIATED," "UNSUBSTANTIATED" or "INCONCLUSIVE" is being reclassified to "UNFOUNDED."
- c **ADDITIONAL INFORMATION** - Supplementary information is being provided for a previously submitted Form SS 8583.

**Where To Send The Report Form SS 8583 (For DOJ reporting only)**

Department of Justice  
Bureau of Criminal Information and Analysis  
P. O. Box 903387  
Sacramento, CA 94203-3870  
ATTENTION: Child Abuse Unit

**REMEMBER**

Submit completed Form SS 8583 to DOJ as soon as possible after completion of the investigation because the case information may contribute to the success of another investigation. It is essential that the report be complete, accurate and timely to provide the maximum benefit in protecting children and identifying and prosecuting suspects. If you have questions about DOJ REPORTING or need a victim or suspect name check, call the DOJ Child Abuse Unit at (916) 227-3285 or CALNET 498-3285.

# SUSPECTED CHILD ABUSE REPORT

To Be Completed by **Mandated Child Abuse Reporters**  
Pursuant to Penal Code Section 11166

CASE NAME: \_\_\_\_\_

PLEASE PRINT OR TYPE

CASE NUMBER: \_\_\_\_\_

<b>A. REPORTING PARTY</b>	NAME OF MANDATED REPORTER	TITLE	MANDATED REPORTER CATEGORY				
	REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS	Street	City	Zip	DID MANDATED REPORTER WITNESS THE INCIDENT? YES NO		
	REPORTER'S TELEPHONE (DAYTIME) ( )	SIGNATURE		TODAY'S DATE			
<b>B. REPORT NOTIFICATION</b>	LAW ENFORCEMENT COUNTY PROBATION AGENCY	COUNTY WELFARE / CPS (Child Protective Services)					
	ADDRESS	Street	City	Zip	DATE/TIME OF PHONE CALL		
	OFFICIAL CONTACTED - TITLE			TELEPHONE ( )			
<b>C. VICTIM</b> One report per victim	NAME (LAST, FIRST, MIDDLE)			BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY	
	ADDRESS	Street	City	Zip	TELEPHONE ( )		
	PRESENT LOCATION OF VICTIM			SCHOOL	CLASS	GRADE	
	PHYSICALLY DISABLED? YES NO	DEVELOPMENTALLY DISABLED? YES NO	OTHER DISABILITY (SPECIFY)			PRIMARY LANGUAGE SPOKEN IN HOME	
	IN FOSTER CARE? YES NO	IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE: DAY CARE CHILD CARE CENTER FOSTER FAMILY HOME FAMILY FRIEND GROUP HOME OR INSTITUTION RELATIVES HOME			TYPE OF ABUSE (CHECK ONE OR MORE) PHYSICAL MENTAL SEXUAL NEGLECT OTHER (SPECIFY)		
	RELATIONSHIP TO SUSPECT			PHOTOS TAKEN? YES NO	DID THE INCIDENT RESULT IN THIS VICTIM'S DEATH? YES NO UNK		
	VICTIM'S SIBLINGS			VICTIM'S PARENTS/GUARDIANS			
1. NAME BIRTHDATE SEX ETHNICITY			1. NAME BIRTHDATE SEX ETHNICITY				
2. _____			2. _____				
3. _____			3. _____				
4. _____			4. _____				
<b>D. INVOLVED PARTIES</b>	NAME (LAST, FIRST, MIDDLE)			BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY	
	ADDRESS	Street	City	Zip	HOME PHONE ( )	BUSINESS PHONE ( )	
	NAME (LAST, FIRST, MIDDLE)			BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY	
	ADDRESS	Street	City	Zip	HOME PHONE ( )	BUSINESS PHONE ( )	
	SUSPECT'S NAME (LAST, FIRST, MIDDLE)			BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY	
	ADDRESS	Street	City	Zip	TELEPHONE ( )		
<b>E. INCIDENT INFORMATION</b>	IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX					IF MULTIPLE VICTIMS, INDICATE NUMBER: _____	
	DATE / TIME OF INCIDENT	PLACE OF INCIDENT					
	NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incidents involving the victim(s) or suspect)						

SS 8572 (Rev. 12/02)

### DEFINITIONS AND INSTRUCTIONS ON REVERSE

**DO NOT** submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code Section 11169 to submit to DOJ a Child Abuse Investigation Report Form SS 8583 if (1) an active investigation was conducted and (2) the incident was determined not to be unfounded.

WHITE COPY-Police or Sheriff's Department; BLUE COPY-County Welfare or Probation Department; GREEN COPY- District Attorney's Office; YELLOW COPY-Reporting Party

DEFINITIONS AND GENERAL INSTRUCTIONS FOR COMPLETION OF FORM SS 8572

All Penal Code (PC) references are located in Article 2.5 of the PC. This article is known as the Child Abuse and Neglect Reporting Act (CANRA). The provisions of CANRA may be viewed at: <http://www.leginfo.ca.gov/calaw.html> (specify "Penal Code" and search for Sections 11164-11174.3). A mandated reporter must complete and submit the form SS 8572 even if some of the requested information is not known. (PC Section 11167(a).)

I. MANDATED CHILD ABUSE REPORTERS

- Mandated child abuse reporters include all those individuals and entities listed in PC Section 11165.7.

II. TO WHOM REPORTS ARE TO BE MADE ("DESIGNATED AGENCIES")

- Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department (not including a school district police or security department), the county probation department (if designated by the county to receive mandated reports), or the county welfare department. (PC Section 11165.9.)

III. REPORTING RESPONSIBILITIES

- Any mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall report such suspected incident of abuse or neglect to a designated agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof *within 36 hours* of receiving the information concerning the incident. (PC Section 11166(a).)
- No mandated reporter who reports a suspected incident of child abuse or neglect shall be held civilly or criminally liable for any report required or authorized by CANRA. Any other person reporting a known or suspected incident of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by CANRA unless it can be proven the report was false and the person knew it was false or made the report with reckless disregard of its truth or falsity. (PC Section 11172(a).)

IV. INSTRUCTIONS

- **SECTION A - REPORTING PARTY:** Enter the mandated reporter's name, title, category (from PC Section 11165.7), business/agency name and address, daytime telephone number, and today's date. Check yes-no whether the mandated reporter witnessed the incident. The signature area is for either the mandated reporter or, if the report is telephoned in by the mandated reporter, the person taking the telephoned report.

IV. INSTRUCTIONS (Continued)

- **SECTION B - REPORT NOTIFICATION:** Complete the name and address of the designated agency notified, the date/time of the phone call, and the name, title, and telephone number of the official contacted.
- **SECTION C - VICTIM (One Report per Victim):** Enter the victim's name, address, telephone number, birth date or approximate age, sex, ethnicity, present location, and, where applicable, enter the school, class (indicate the teacher's name or room number), and grade. List the primary language spoken in the victim's home. Check the appropriate yes-no box to indicate whether the victim may have a developmental disability or physical disability and specify any other apparent disability. Check the appropriate yes-no box to indicate whether the victim is in foster care, and check the appropriate box to indicate the type of care if the victim was in out-of-home care. Check the appropriate box to indicate the type of abuse. List the victim's relationship to the suspect. Check the appropriate yes-no box to indicate whether photos of the injuries were taken. Check the appropriate box to indicate whether the incident resulted in the victim's death.
- **SECTION D - INVOLVED PARTIES:** Enter the requested information for: Victim's Siblings, Victim's Parents/Guardians, and Suspect. Attach extra sheet(s) if needed (provide the requested information for each individual on the attached sheet(s)).
- **SECTION E - INCIDENT INFORMATION:** If multiple victims, indicate the number and submit a form for each victim. Enter date/time and place of the incident. Provide a narrative of the incident. Attach extra sheet(s) if needed.

V. DISTRIBUTION

- **Reporting Party:** After completing Form SS 8572, retain the yellow copy for your records and submit the top three copies to the designated agency.
- **Designated Agency:** *Within 36 hours* of receipt of Form SS 8572, send **white copy** to police or sheriff's department, **blue copy** to county welfare or probation department, and **green copy** to district attorney's office.

ETHNICITY CODES

1 Alaskan Native	6 Caribbean	11 Guamanian	16 Korean	22 Polynesian	27 White-Armenian
2 American Indian	7 Central American	12 Hawaiian	17 Laotian	23 Samoan	28 White-Central American
3 Asian Indian	8 Chinese	13 Hispanic	18 Mexican	24 South American	29 White-European
4 Black	9 Ethiopian	14 Hmong	19 Other Asian	25 Vietnamese	30 White-Middle Eastern
5 Cambodian	10 Filipino	15 Japanese	21 Other Pacific Islander	26 White	31 White-Romanian

**REVIEW OF COMMISSION STAFF'S PARAMETERS AND GUIDELINES  
INTERAGENCY CHILD ABUSE AND NEGLECT INVESTIGATION REPORTS**

**TABLE OF EXHIBITS**

**Volume Two**

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# CALIFORNIA MEDICAL PROTOCOL FOR EXAMINATION OF CHILD PHYSICAL ABUSE AND NEGLECT VICTIMS



State of California  
Governor's Office of Emergency Services

Available at: [www.oes.ca.gov](http://www.oes.ca.gov)  
Criminal Justice Programs Division  
Publications and Brochures

## PREFACE

Pioneers in the field of child physical abuse and neglect began in the field of medicine. They were subsequently joined by the disciplines of social work, nursing, law enforcement, psychology, psychiatry, and child development.

The history of this intervention movement is characterized by peaks and plateaus as the larger community assimilated new developments lead by the pioneering disciplines. Medicine began the movement with published observations by a pediatric radiologist, Dr. John Caffey, in the 1940's. Dr. Henry Kempe, a pediatrician, galvanized the movement by establishing the concept of the "battered child syndrome" in 1962. He took his concerns to Congress and by 1965, most states had enacted child abuse reporting laws.

Issuance of the OES 900 Medical Report for Suspected Child Physical Abuse and Neglect Examinations and Protocol takes the field to a new level. In 2002, the California Legislature and Governor declared that adequate protection of victims of child physical abuse and neglect has been hampered by the lack of consistent and comprehensive medical examinations. The Legislature enacted and the Governor signed SB 580, Statutes of 2002 (Figueroa), into law to address this need by establishing a standardized medical report form and protocol.

Many deserve recognition for the vision captured in these documents. The Children's Justice Act Task Force recommended the allocation of funds to accomplish this project; the Child Physical Abuse and Neglect Advisory Committee contributed wisdom, consultation, and guidance; and, the California Medical Training Center at the University of California, Davis is commended for strong work, expertise, and dedication to the production of the form, instructions, and protocol. This collective effort moves the field forward on behalf of children.

The California Medical Protocol for Examination of Suspected Child Physical Abuse and Neglect Victims provides recommended methods for meeting the minimum legal standards established by Penal Code Section 11171 for performing medical examinations of physically abused and neglected children. This protocol contains the following information:

- Standard medical report form (OES 900) for documentation of findings from suspected child physical abuse and neglect examinations;
- Step-by-step procedures for conducting examinations opposite each page of the standard forms;
- Examination protocol for child physical abuse and neglect;
- Contextual information for performing examinations and implementing a multi-disciplinary team approach; and
- Relevant and expanded information on patient consent, mandatory reporting laws, financial compensation for examinations, crime victim compensation, and evidence collection and preservation.

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**CHAPTER I**

**USE OF STANDARDIZED FORMS AND TRAINING**

In 2002, the California Legislature enacted and the Governor signed SB 580 Statutes of 2002 (Figueroa) into law to amend the penal code pertaining to the performance of medical examinations for physically abused and neglected children. See **Appendix A** for a copy of this penal code section. The Legislature declared that:

- Adequate protection of victims of child physical abuse and neglect has been hampered by the lack of consistent and comprehensive medical examinations; and
- Enhancing examination procedures, documentation, and evidence collection relating to child abuse and neglect will improve the investigation of child abuse and neglect as well as other child protection efforts.

**A. CHILD PHYSICAL ABUSE AND NEGLECT EXAMINATIONS**

As a result, the Governor’s Office of Emergency Services issued effective January 1, 2004 the OES 900 Medical Report: Suspected Child Physical Abuse and Neglect Examination for recording the results of medical examinations.

<b>OES 900</b>	<b>Medical Report: Suspected Child Physical Abuse and Neglect Examination</b> <ul style="list-style-type: none"> <li>• Suspected child physical abuse and neglect</li> <li>• Examination of children and adolescents under age 18</li> </ul>
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**B. CHILD SEXUAL ABUSE EXAMINATIONS**

In 1984, the California Legislature enacted legislation to establish standardized procedures for the performance of child sexual abuse and sexual assault medical evidentiary examinations. California Penal Code Section 13823.5 requires the use of these standard forms for examinations of victims of child sexual abuse and adult and adolescent sexual assault.

**Required Standard State Forms for Child Sexual Abuse and Sexual Assault Exams**

<b>OES 923</b>	<b>Forensic Medical Report: Acute (&lt;72 hours) Adult/Adolescent Sexual Assault Examination</b>
<b>OES 925</b>	<b>Forensic Medical Report: Nonacute (&gt;72 hours) Child/Adolescent Sexual Abuse Examination</b>
<b>OES 930</b>	<b>Forensic Medical Report: Acute (&lt;72 hours) Child/Adolescent Sexual Abuse Examination</b>

**Recommended Standard State Form**

<b>OES 950</b>	<b>Forensic Medical Report: Sexual Assault Suspect Examination</b>
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**Key terms for Sexual Assault and Child Sexual Abuse Examinations**

These terms are used to describe time frames. They are not intended to suggest that, after 72 hours, a complete examination should not be done. It is not uncommon to detect physical findings after 72 hours.

<b>Acute</b>	<b>Less than 72 hours have passed since the incident (&lt;72 hours)</b>
<b>Nonacute</b>	<b>More than 72 hours have passed since the incident (&gt;72 hours)</b>

**C. SUGGESTED USE OF THE STANDARD STATE FORMS: FOLLOW LOCAL POLICY**

<b>OES 923</b>	<b>Forensic Medical Report: Acute (&lt;72 hours) Adult/Adolescent Sexual Assault Examination</b> <ul style="list-style-type: none"> <li>• History of <b>acute sexual assault</b> (&lt;72 hours)</li> <li>• Examination of adults (age 18 and over) and adolescents (ages 12-17)</li> </ul>
<b>OES 925</b>	<b>Forensic Medical Report: Nonacute (&gt;72 hours) Child/Adolescent Sexual Abuse Examination</b> <ul style="list-style-type: none"> <li>• History of <b>nonacute sexual abuse</b> (&gt;72 hours)</li> <li>• Examination of children and adolescents under age 18</li> </ul>
<b>OES 930</b>	<b>Forensic Medical Report: Acute (&lt;72 hours) Child/Adolescent Sexual Abuse Examination</b> <ul style="list-style-type: none"> <li>• History of <b>chronic sexual abuse (incest) and recent incident</b> (&lt;72 hours)</li> <li>• Examination of children and adolescents under age 18</li> </ul>
<b>OES 950</b>	<b>Forensic Medical Report: Sexual Assault Suspect Examination</b> <ul style="list-style-type: none"> <li>• Examination of person(s) suspected of sexual assault or child sexual abuse</li> </ul>

**D. TRAINING**

The California Medical Training Center (CMTC) was established by Penal Code Section 13823.93 and is grant funded to provide training for physicians and nurses on how to perform medical evidentiary examinations for victims of:

- Child physical abuse and neglect;
- Child sexual abuse;
- Sexual assault;
- Domestic violence; and
- Elder and dependent adult abuse and neglect.

Training is also provided to criminal justice and investigative social services personnel on the interpretation of medical findings for use in case investigations, prosecution, and for others involved in the evaluation of medical evidence. See **Appendix B** for information on how to contact the California Medical Training Center at the University of California, Davis.

The California Medical Training Center at the University of California, Davis developed the OES 900 form, instructions and examination protocol under an additional grant from the Governor’s Office of Criminal Justice Planning (now the Governor’s Office of Emergency Services).

## CHAPTER II

### MANDATORY REPORTING AND CONFIDENTIALITY OF REPORTS

#### A. MANDATORY REPORTING

The Child Abuse and Neglect Reporting Act is contained in Penal Code Section 11164-11174.4. The intent and purpose of the mandatory reporting law is to protect children from abuse and neglect. As used in this section, a child means a person under the age of 18.

##### 1. Health practitioners are mandated reporters

There are 35 categories of professionals, paraprofessionals and employees of institutions, organizations, and commercial film and photographic print processing companies required to report suspected child abuse and neglect pursuant to Penal Code Section 11165.7. See **Appendix C** for a list of these categories.

Health practitioners are required to report known or suspected child abuse and neglect **immediately by telephone and to submit a written report within 36 hours** to a child protective agency.

- A health practitioner means a physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code (Penal Code Section 11165.7).
- Related categories include emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a coroner, and a medical examiner.
- A child protective agency means a law enforcement agency, the county department of social services, or the county probation department.
- The obligation of mandated reporters to make a report to a child protective agency arises when they, in their professional capacity or within the scope of their employment, have knowledge of or observe a child who they know or reasonably suspect has been the victim of child abuse (Penal Code Section 11166).
- The term "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate, on his or her training and

experience, to suspect child abuse and neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a reason for a reasonable suspicion of child sexual abuse (Penal Code Section 11166).

- For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself, a sufficient basis for reporting child abuse and neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency (Penal Code Section 11165.3).
- No supervisor or administrator may impede or inhibit these reporting duties and no person making such a report shall be subject to any sanction for making the report (Penal Code Section 11166).

## **2. Criminal penalties for failure to report child abuse or neglect**

The failure of a mandated reporter to report known or suspected child abuse or neglect is punishable by a fine not to exceed \$1,000, by imprisonment in the county jail for a period not to exceed six months, or both (Penal Code Section 11166).

## **3. Telephone and written report requirements (Penal Code Sections 11165-11168)**

- Make an immediate telephone report to a child protective agency and include the following information:
  - Name of the person making the report;
  - Name of the child;
  - Present location of the child;
  - Nature and extent of the injury; and
  - Other information requested by the child protective agency.
- Submit a written report to a child protective agency within 36 hours, using the Suspected Child Abuse Report Form (DOJ SS 8572). See **Appendix D** for a copy of this form. See **Appendix E** for a list of Child Protective Services (CPS) agencies for every county in California to obtain information and training on the use of the form.
- When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the

team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report (Penal Code Section 11166).

**4. Immunity from civil or criminal liability for complying with the child abuse reporting law**

- Health practitioners and others required to report known or suspected child abuse cannot be held civilly or criminally liable for any report required or authorized by the child abuse reporting law (Penal Code Section 11172).
- Physicians and hospitals may be held liable for injuries sustained by a child for failure to diagnose and report child abuse to authorities resulting in the child being returned to the parents and receiving further injuries by them (Landeros v. Flood, (1926) 131 CAL. RPTER 69, 551 P.2d 389, 17 C.3d 399, 97 A.L.R. 3d 324).

**5. Definitions of unfounded, substantiated, and inconclusive reports used by child protective agencies (Penal Code Section 11165.12)**

**Unfounded Report**

Unfounded report means 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, as defined in Penal Code Section 11165.6.

**Substantiated Report**

Substantiated report means a report that is determined by the investigator who conducted the investigation, based upon some credible evidence, to constitute child abuse or neglect, as defined in Penal Code Section 11165.6.

**Inconclusive Report**

Inconclusive report means a report that is determined by the investigator who conducted the investigation not to be unfounded, but one in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

**B. CONFIDENTIALITY OF REPORTS**

**1. Confidentiality of suspected child abuse and neglect report forms**

Written reports required by the child abuse reporting law are confidential and can only be released to agencies receiving or investigating mandated reports (law enforcement or child protective services); to the district attorney involved in a

criminal prosecution; counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code; county counsel; a county or state licensing agency when abuse or neglect in out-of-home care is reasonably suspected; coroners; medical examiners; and multi-disciplinary personnel teams as defined in Section 18951 of the Welfare and Institutions Code; Hospital SCAN Teams; and other specified institutional entities (Penal Code Section 11167.5). Any violation of confidentiality is punishable by up to six months in jail, by a fine of \$500, or both (Penal Code Section 11167.5).

- **Multi-disciplinary Team**

Multi-disciplinary personnel, defined in Welfare and Institutions Code Section 18951, means any team of three or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse.

The team may include, but not be limited to:

- Psychiatrists, psychologists, or other trained counseling personnel;
- Police officers or other law enforcement agents;
- Medical personnel with sufficient training to provide health services;
- Social workers with experience or training in child abuse prevention; and
- Any public or private school teacher, administrative officer, supervisor of child welfare attendance, or certified pupil personnel employee.

- **Hospital SCAN Team**

A hospital SCAN (Suspected Child Abuse and Neglect) team means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital SCAN teams (Penal Code Section 11167.5).

## **2. Release of medical reports of suspected child abuse and neglect**

Medical report(s) are subject to the confidentiality requirements of the Child Abuse and Neglect Reporting Act (Penal Code 11164-11174.4 or privilege), the Medical Information Act (Civil Code Section 58 et seq.), the Physician-Patient Privilege (Evidence Code Section 990), and the Official Information Privilege (Evidence Code Section 1040). They can only be released to those involved in the investigation and prosecution of the case: a law enforcement officer, district attorney, city attorney, crime laboratory, child protective services social worker, a child abuse and neglect multi-disciplinary team member, county licensing agency, and coroner. Medical reports can only be released to the defense counsel through discovery of documents in the possession of a prosecuting agency or after the appropriate court process (i.e., judicial review and a court order).

## CHAPTER VIII

### EXAMINATION PROTOCOL: CHILD NEGLECT

#### A. EVALUATION OF CHILD NEGLECT

##### 1. Obtain a complete medical history in children presenting with any condition suspected of being the result of neglect

- Obtain the birth history and weight at birth.
- Ask whether the mother received prenatal care.
- What immunizations has the child had?
- Has the child received the appropriate health care over his/her lifetime?
- Does the child have a primary care provider?
- What is the baby's diet? Does the family have sufficient resources to meet everyone's nutritional needs? Do they receive food stamps? How often does the family skip a meal because of inadequate resources?
- Obtain a history of developmental milestones.
- Obtain information about schooling and school attendance. How often have children missed school during the previous six months? What school do they attend and what is their school performance?
- Where does the family live? Who else lives in the household?
- Obtain a social history, including economic resources, educational level of parents, substance abuse and incarceration. Who cares for the child when the parents are not available? Is extended family available?

##### 2. Perform a complete physical examination

- Weigh and measure the child, and plot measurements for gender and age on appropriate growth curves. When possible, review all prior growth parameters to determine whether growth impairment, if present, has been chronic or is of recent onset.
- Assess nutrition and hygiene. Evidence of substandard nutrition can be noted on physical examination in the form of diminished subcutaneous tissue.
- Assess bruises, scars, untreated injuries. Neglected children are at increased risk of physical abuse and for accidental injuries because of a general lack of supervision.
- Screen for sexual abuse. Neglected and homeless children are at risk for sexual victimization.
- Assess hygiene and absence of appropriate clothing (e.g. , cleanliness, smelling of urine or stool, or lack of shoes and clothing).

- Assess healthcare history.
  - Has there been lack of care for accidental injuries?
  - If there is a chronic medical condition, has there been treatment?
  - What are physical findings relevant to the condition?
- Review immunizations to ascertain whether the child is up to date. Depending upon the circumstances of the case, records may need to be obtained from schools, other hospitals and clinics, the local CHDP (Child Health, Disability, and Prevention Program), or the CWS/CMS system (a computerized database for managing information about children in the California child welfare system).
- Note clingy, aggressive, or overly-compliant behavior when experiencing painful procedures.

**3. Screen for dental problems**

Unattended dental cavities are frequently present in neglected children. Signs and symptoms of dental neglect include untreated, rampant cavities; untreated pain, infection, bleeding, or trauma; and/or lack of continuity of care once informed that the above conditions exist.

**4. Screen for developmental problems (e.g., motor skills, speech and language delay)**

This screening should include the following areas: developmental milestones and history, sensorymotor abilities, speech and language acquisition, fine and gross motor skills, socio-emotional functioning, and adaptive skills (e.g., eating patterns, sleeping, etc.).

**5. Order laboratory testing, if indicated**

Laboratory tests should be ordered to diagnose and evaluate untreated and/or chronic medical conditions and to ascertain whether there are conditions which may be mistaken for neglect. In general, a hemoglobin is an appropriate study to obtain to determine if the child is anemic. Obtaining lead levels for children under six years of age is recommended.

**6. Order imaging studies, if indicated**

Skeletal trauma series are indicated in children under the age of two years who have signs of severe neglect. The purpose of these studies is to detect the presence of occult fractures.

Additional imaging studies are rarely needed in the assessment of the child who has been physically neglected unless there is some underlying medical condition that warrants such an evaluation. For instance, the child with recurrent urinary tract infections who has not been given the prophylactic antibiotics might need a renal scan to determine the extent of renal scarring that has developed.

**7. Assess whether the mother or caretaker will follow through to ensure that the medical problems will be addressed**

- Has the mother been reliable in the past on medical follow-up?
- Has anything new developed to prevent the mother from following up on recommended treatment (e.g. alcohol or drug problems, domestic violence, abusive, controlling boyfriend, or mental health problems)?
- What resources does the family need to ensure compliance (e.g., transportation)?
- Is the neglect representative of an isolated incident that occurred because of an unusual set of circumstances that has since been remedied? Or, are there risk factors which suggest that the child is at continued risk in their environment? Is the family in need of community resources that require the mobilization of social service agencies?
- Evaluate whether Children's Protective Services should be involved. Most cases of neglect require an evaluation not only by medical personnel, but also by social services because there are many factors which contribute to a child being neglected. An extensive medical and psychosocial evaluation is key to assuring a good outcome.

**B. LEGAL DEFINITIONS: SEVERE AND GENERAL NEGLECT**

Neglect means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person. Severe and general neglect are defined below by Penal Code Section 11165.2.

**1. Severe neglect**

Severe neglect means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive. Severe neglect also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Penal Code Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

**2. General neglect**

General neglect means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code, or not receiving specified medical treatment for religious reasons, shall not for that reason alone be

considered a neglected child. An informed and appropriate medical decision made by the parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

### C. CLINICAL PRESENTATION OF NEGLECT

#### 1. General Neglect

Children who are neglected may come to medical attention for a variety of reasons. Sometimes they are brought to the physician for an unrelated infectious illness, and evidence of neglect is apparent on physical examination. For instance, the child may appear dirty, smell of urine or stool, and be underweight. Other times, neglect may result in children sustaining a serious injury, such as being burned or drowned because of inadequate supervision. Children who receive inadequate food may present with growth impairment. Children with emotional neglect may experience behavioral or conduct problems in school. Some children die as a result of neglect, and these cases are usually evaluated by the medical examiner's office.

#### 2. Physical Neglect Refusal of Health Care

Failure to provide or allow needed care in accordance with recommendations of a competent health care professional for a physical injury, illness, medical condition, or impairment.

#### Delay in Health Care

Failure to seek timely and appropriate medical care for a serious health problem which any reasonable person would have recognized as needing professional medical attention.

#### Abandonment

Desertion of a child without arranging for reasonable care and supervision. This category includes cases in which children are not claimed within two days, and when children are left by parents/substitutes who give no (or false) information about their whereabouts.

#### Drug Endangered Children (DEC)

Children removed from drug manufacturing homes or homes with extensive drug use are often subject to severe neglect and accidental drug ingestion through common food and drink products in the home and exposure to trays of drug powder or crystals and residue.

<b>Expulsion</b>	Other blatant refusals of custody, such as permanent or indefinite expulsion of a child from the home without adequate arrangement for care by others, or refusal to accept custody of a returned runaway.
<b>Other Custody Issues</b>	Custody-related forms of inattention to the child's needs other than those covered by abandonment or expulsion. For example, repeated shuttling of a child from one household to another due to unwillingness to maintain custody, or chronically and repeatedly leaving a child with others for days/weeks at a time.
<b>Other Physical Neglect</b>	Conspicuous inattention to avoidable hazards in the home; inadequate nutrition, clothing, or hygiene; and, other forms of reckless disregard for the child's safety and welfare, such as driving with the child while under the influence of drugs or alcohol, or leaving a young child unattended in a motor vehicle.
<b>3. Inadequate Supervision</b>	Child left unsupervised or inadequately supervised for extended periods of time or allowed to remain away from home overnight without the parent/substitute knowing (or attempting to determine) the child's whereabouts.
<b>4. Emotional Neglect</b>	
<b>Inadequate Nurturance/Affection</b>	Marked inattention to the child's needs for affection, emotional support, attention, or competence.
<b>Chronic/Extreme Abuse or Domestic Violence</b>	Chronic or extreme spouse abuse or other domestic violence.
<b>Permitted Drug/Alcohol Abuse</b>	Encouraging or permitting drug or alcohol use by the child, or cases where parent/guardian was informed of the problem and did not attempt to intervene.
<b>Refusal of Psychological Care</b>	Refusal to allow needed and available treatment for a child's emotional or behavioral impairment or problem in accord with competent professional recommendation.

**Delay in Psychological Care**

Failure to seek or provide needed treatment for a child's emotional or behavioral impairment or problem which any reasonable person would have recognized as needing professional psychological attention (e.g., severe depression, suicide attempt).

**Other Emotional Neglect**

Other inattention to the child's developmental/emotional needs not classifiable under any of the above forms of emotional neglect (e.g., markedly overprotective restrictions which foster immaturity or emotional overdependence, chronically applying expectations clearly inappropriate in relation to the child's age or level of development, etc.).

**5. Educational Neglect**

**Permitted Chronic Truancy**

Habitual truancy averaging at least five days a month is classifiable under this form of maltreatment, if the parent/guardian has been informed of the problem, and has not attempted to intervene.

**Failure to Enroll/ Other Truancy**

Failure to register or enroll a child of mandatory school age, causing the school-aged child to remain at home for nonlegitimate reasons (e.g., to work, to care for siblings) an average of at least three days a month.

**Inattention to Special Education Needs**

Refusal to allow or failure to obtain recommended remedial educational services, or neglect in obtaining or following through with treatment for a child's diagnosed learning disorder, or other special educational needs without reasonable cause.

**6. Additional commentary on definitions**

**Medical neglect**

Medical neglect may occur for acute problems, such as burns or injuries that are sustained accidentally; acute illnesses, such as gastroenteritis; or, for routine health maintenance. Some parents do access health care when their children have chronic problems, but then fail to follow the recommendations of the physician. For instance, a child with asthma may be prescribed several medications none of which are administered. As a result, the child may require repeated hospitalizations including admission to an intensive care unit.

Parents may utilize nontraditional medicine to treat their child's ailment. Examples of such practices include cao gio, or coining and moxibustion. Residual bruises from these practices may be mistaken for inflicted trauma. The use of non-traditional medicine is not condemned so long as it does not interfere with the child receiving appropriate medical care, and does not harm the child.

### **Child abandonment**

Abandonment may involve frank abandonment, such as when a child is left in a trash dumpster, or, left alone, unprotected in a house or apartment without any adult supervision. Abandonment also occurs when a parent leaves the child in the care of others and then fails to return at an appointed time. Inadequate supervision is another form of abandonment as well as cases where both parents renege on their responsibilities as parents. Adolescents who are expelled from the home because of "misbehavior" are abandoned. These adolescents are frequently referred to as "throwaways."

### **Delay in accessing medical care**

- Parents may not have the financial means to pay for healthcare, and they delay seeking treatment in the hope that the illness will resolve on its own;
- Parents are unsophisticated and do not appreciate the seriousness of the illness;
- Parents are overtly negligent, and simply do not provide for their child's health care needs;
- Parents are developmentally disabled or mentally ill and cannot properly care for their child; or,
- Parents whose child has been physically and/or sexually abused and they are trying to prevent this matter from coming to the attention of authorities.

### **Lack of supervision**

Children who are left unsupervised may die as a result of such neglect. Common examples include children who die in house fires, from drowning, starvation, or inadequate medical care.

### **Religious beliefs**

Some parents refuse medical care because of religious beliefs. Consult with Child Protective Services (CPS) and follow local protocol.

## **E. PATHOPHYSIOLOGY**

There are many factors that contribute to neglect. Parental factors include maternal depression, parental substance abuse, maternal developmental delay or retardation, and lack of education. There are also features in the child that place additional stress on the parent-child relationship. Children with chronic disabilities may strain the resources of a family. Similarly, infants who have been born prematurely are at increased risk of being neglected or abused. Bonding between a mother and her premature infant may be interrupted because of the separation between the two during the early period after birth. Sometimes the “goodness of fit” between the infant and mother is lacking, and the pair do not act as a reciprocal dyad.

Certain family features are also associated with neglect. These include absent or negative interactions between family members. Poor parenting skills may also be noted. There is frequently social isolation and a single parent struggling with stressors such as unemployment, illness (including mental illness), prison, and eviction. On a more global scale, community and societal factors also contribute to the risk of neglect. The lack of child care in a community means that single parents may leave young children inadequately supervised in order to go to work. The lack of convenient public transportation may impact access to medical care. Poverty, violence, and substandard educational resources all contribute to neglect within certain populations. For instance, in neighborhoods perceived to be unsafe, children are frequently prohibited from playing outdoors and forming normal friendships because of safety concerns.

## **F. DIFFERENTIAL DIAGNOSIS**

In any child who presents with a medical condition that may be related to neglect, healthcare providers must explore other explanations that could account for the findings. Children who appear to be malnourished may suffer from a number of medical problems that affect their ability to grow and gain weight. Children who present with injuries need to be evaluated for the circumstances surrounding the injury. Did the parent’s action contribute to the child being injured? Were these actions substandard, or would other parents have acted in a similar manner? For instance, if a child accidentally drowns in a bathtub, what reasons were given for leaving the child unattended?

The differential diagnosis of physical neglect depends on the presenting complaint. Children who are inadequately clothed may present with hypothermia. The differential diagnosis would include overwhelming sepsis, drug-exposure (COOLS - carbon monoxide, opiates, oral hypoglycemics [insulin], liquor, sedative-hypnotics), or

environmental exposure. Children with refractory medical conditions such as intractable asthma or unstable diabetes may be viewed as medically fragile, if the issue of non-compliance is not raised. Failure to obtain medical care in a timely manner may result in disease progression to a point where diagnosis and medical intervention are more difficult.

This chapter is a condensed version of the article entitled "Child Neglect" by Carol Berkowitz, M.D. from the book Child Abuse and Neglect: Guidelines for Identification, Assessment, and Case Management, published by Volcano Press, 2003 ([www.volcanopress.com](http://www.volcanopress.com)).

This publication contains extensive chapters on the identification, assessment and case management of various forms of child abuse and neglect written by over 95 experts in the field. This project was partially funded by the Governor's Office of Criminal Justice Planning (now the Governor's Office of Emergency Services), State Maternal and Child Health, and Volcano Press, Inc. as a public/private partnership.

## CHAPTER IX

### IMPORTANT CONSIDERATIONS IN THE COLLECTION AND PRESERVATION OF EVIDENCE

#### A. CRIME LABORATORIES

Crime laboratories analyze and interpret evidence collected during the medical evidentiary examination. There are 31 public crime laboratories in California: 19 city and county laboratories and 12 California Department of Justice laboratories. There are also a number of privately operated crime laboratories. Crime laboratories have slightly different requirements for the collection and disposition of some types of evidence.

#### B. ENSURING EVIDENCE INTEGRITY

##### 1. Key components of proper evidence handling are:

- Placing items in appropriate evidence containers;
- Labeling the evidence containers;
- Sealing the evidence containers;
- Storing evidence in a secure area; and
- Maintaining the chain of custody.

##### 2. Use appropriate evidence containers to ensure that evidence cannot leak through the container, be lost, or deteriorate.

• Slide mailers	To protect slides.
• Bindles and other small containers	To protect items that can be easily lost such as crusted materials, soil, and small fibers. Bindles and other small protective containers are then placed into the evidence collection envelopes or boxes described below.
• Envelopes or boxes	To protect evidence such as swabs, reference hair samples, and foreign materials, and to hold the small containers listed above.
• Evidence kit container	A larger envelope or box to hold the individual evidence collection envelopes, small boxes, and slide mailers. The outside of the evidence kit container must have a chain of custody form printed on it or securely attached.
• Paper bags	To hold clothing.

The following chart, not meant to be all-inclusive, is a list of suggested containers for different types of evidence:

Items	Suggested Containers
<ul style="list-style-type: none"> <li>• Swabs (dried)</li> </ul>	<ul style="list-style-type: none"> <li>• Envelopes</li> <li>• Boxes</li> </ul>
<ul style="list-style-type: none"> <li>• Slides (dried)</li> </ul>	<ul style="list-style-type: none"> <li>• Slide mailers</li> </ul>
<ul style="list-style-type: none"> <li>• Large foreign materials (e.g., hairs, grass)</li> </ul>	<ul style="list-style-type: none"> <li>• Envelopes</li> </ul>
<ul style="list-style-type: none"> <li>• Small or loose foreign materials (e.g., soil, paint, splinters, glass, fibers)</li> </ul>	<ul style="list-style-type: none"> <li>• Bindles placed into envelopes</li> <li>• Tapelifts in clear plastic containers</li> </ul>
<ul style="list-style-type: none"> <li>• Matted hair bearing crusted material</li> </ul>	<ul style="list-style-type: none"> <li>• Bindles placed into envelopes</li> </ul>
<ul style="list-style-type: none"> <li>• Fingernail scrapings or cuttings</li> </ul>	<ul style="list-style-type: none"> <li>• Paper bindles placed into envelopes</li> <li>• Sealable boxes</li> </ul>
<ul style="list-style-type: none"> <li>• Reference blood samples, liquid</li> </ul>	<ul style="list-style-type: none"> <li>• Lavender and/or yellow stoppered evacuated blood collection vials (according to local policy) placed in envelopes</li> </ul>
<ul style="list-style-type: none"> <li>• Saliva reference sample (dried)</li> </ul>	<ul style="list-style-type: none"> <li>• Envelopes</li> </ul>
<ul style="list-style-type: none"> <li>• Clothing</li> </ul>	<ul style="list-style-type: none"> <li>• Paper bags (not plastic)</li> </ul>
<ul style="list-style-type: none"> <li>• Toxicology samples Blood alcohol/toxicology Urine toxicology</li> </ul>	<ul style="list-style-type: none"> <li>• Gray stoppered evacuated blood collection vials</li> <li>• Tightly sealed clean plastic or glass container for urine samples</li> </ul>

### 3. Label evidence containers

Clearly label evidence to enable the person collecting it to later identify it in court and to ensure that the chain of custody is maintained. Many emergency departments use addressograph machines or computerized label generators to expedite labeling of evidence. Label envelopes or boxes with the following information:

- Full name of patient;
- Date of collection;
- Description of the evidence including the location from which it was collected; and
- Signature or initials of the person who collected the evidence and placed it in the container.

### 4. Seal evidence containers

Properly seal evidence containers to ensure that contents cannot escape and that nothing can be added or altered by:

- Securely taping the container (do not lick the adhesive seal); and
- Initialing and dating the seal by writing over the tape onto the evidence container. Stapling is not considered a secure seal.
- See **Appendix G**: Sealed Evidence Envelope for an example of proper sealing.

### 5. Store evidence in a secure area

Evidence must be kept in a secure area when not directly in the possession of a person listed in the chain of custody.

### 6. Maintain the chain of custody

The chain of custody documents the handling, transfer, and storage of evidence beginning with the collection of the evidence at the medical facility. It continues with each transfer of the evidence to law enforcement, the crime laboratory, and others. Complete documentation of the chain of custody information ensures there has been no loss or alteration of evidence prior to trial.

- **Document all transfers of evidence with the following information:**
  - Name of person transferring custody;
  - Name of person receiving custody;
  - Date of transfer; and
  - Some jurisdictions also require documentation of time of evidence transfer. Consult your local crime laboratory for their requirements.

- **Chain of custody information can be:**
  - Printed by hand on an evidence envelope or box;
  - Securely attached to an evidence envelope or box; or
  - Preprinted on special envelopes, boxes and/or forms.
  - See **Appendix H** for a sample of the Chain of Custody Form.

### C. COLLECTION OF CLOTHING

#### 1. Collect clothing worn by the patient upon arrival at the hospital, if indicated.

#### 2. Types of evidence on clothing

Clothing worn at the time of the assault may contain useful evidence:

- Rips, tears or other damage sustained as a result of the assault;
- Blood and other body fluids from the patient; and
- Foreign materials such as fibers, grass, soil, and other debris.

#### 3. Collection procedures

- **Have patients remove their shoes first, then disrobe on two sheets of paper placed on top of one another on the floor.**

The purpose of the bottom sheet is to protect the top sheet from dirt and debris on the floor. The purpose of the top sheet is to collect loose trace evidence which may fall from the clothing during disrobing. Using the disposable paper from examination tables is acceptable for this purpose.

- **Shoes**

The shoes may be collected and packaged separately, if requested by the investigating agency or if indicated by the assault history.

- **Hairs, fibers, and debris**

Collect loose hairs, fibers, and debris that fall from the clothing on the top sheet of paper placed on the floor for this purpose. After the clothing has been collected, fold the top sheet of paper (from the two sheets on the floor) into a large bundle to ensure that all foreign materials are contained inside. Label and seal to ensure that the contents cannot escape. Place into a large paper bag. The bottom sheet should be discarded.

- **Folding garments**

Fold each garment as it is removed to prevent body fluid stains or foreign materials from being lost or transferred from one garment to another. Avoid folding the clothing across possible body fluid stains.

- **Wet clothing**

It is preferable to dry clothing before packaging. If drying is not possible, wet clothing can be folded sandwiched between sheets of paper. After placing the item in a paper bag, clearly label the bag as containing a wet item and notify the law enforcement officer. Consult your local crime laboratory for additional recommendations.

- **Containers for clothing**

Package each item of clothing in an individual paper bag. **Do not use plastic bags.** Plastic retains moisture which can result in mold and deterioration of biological evidence.

**4. Securely seal and label each clothing bag with the following information:**

- Full name of patient;
- Date of collection;
- Brief description of item; and
- Signature or initials of the person who collected the evidence and placed it in the container.

**5. Place small bags of clothing and the large paper bindle (from the floor) into large bag(s)**

Place all bags (except those containing wet evidence) and the bindle made from the top sheet of paper into a large paper bag which has a chain of custody form printed on it or firmly attached. Multiple large bags may be used, if necessary.

**D. PROCEDURES FOR BITE MARKS**

**1. Photographing bite marks**

Individuals can be identified by the size and shape of their bite marks. Properly taken photographs of bite marks and bruises can assist in the identification of the person who inflicted the injury. See Chapter X on Photography.

**2. Collecting saliva from bite marks after photo documentation**

This sample can be examined by the crime laboratory for the presence of saliva and can be genetically typed and compared to potential suspects. Follow these procedures:

- Swab the general area of trauma with a swab moistened with distilled, deionized or sterile water.
- **Note:** If the patient history indicates a bite and there are no visible findings, swab the indicated area.

- Collect a control swab from an unbiten atraumatic area adjacent to the suspected saliva stain.
- Label, air dry, and package the evidence and control swabs separately.

### **3. Casting bite marks**

- If the bite has perforated, broken, or left indentations in the skin, a cast of the mark may be indicated. The impressions left in the skin from a bite mark fade very quickly. If casting is indicated, it must be performed expeditiously.
- A forensic dentist should be consulted in these cases. The procedure for consulting such experts varies among jurisdictions. Consult with the law enforcement agency having jurisdiction over the case.
- Bite marks may not be obvious immediately following an assault, but may become more apparent with time. A recommendation should be made to the law enforcement agency to arrange for follow-up inspection within one to two days and to have additional photographs taken.

## **E. BRUISING AND AGING OF INJURIES**

Bruises evolve and change color in an unpredictable sequence. Determination of the age of bruising can only be done in the broadest of time frames. Use caution in the identification of bruises of different ages.

- Photograph bruises to document injuries and to assist in the identification of the object that inflicted the injury.
- Deep tissue injuries may not be seen or felt initially.
- Arrange or recommend to the law enforcement agency to have follow-up photographs taken in one to two days after the bruising develops more fully.

## **F. TOXICOLOGY**

In addition to clinical implications, the presence of drugs in the patient's blood or urine may have legal significance.

### **1. Collect toxicology samples if the patient:**

- Is unconscious;
- Exhibits abnormal vital signs;
- Reports ingestion of drugs or alcohol;
- Exhibits signs of memory loss, dizziness, confusion, drowsiness, impaired judgment;
- Shows signs of impaired motor skills;
- Describes loss of consciousness, memory impairment or memory loss;
- Reports nausea; and/or
- Exhibits other unexplained neurologic findings such as seizures.

**2. Use these containers for toxicology samples:**

Blood samples	Gray stoppered evacuated blood collection vials
Urine Samples	Tightly sealed clean plastic or glass container
<b>Note:</b> Refrigeration of toxicology samples is recommended.	

**3. Collect toxicology samples as soon as possible**

Alcohol metabolizes rapidly. Many drugs are also quickly eliminated from the body.

<b>For alcohol analysis, collect a blood sample (5cc).</b>
<ul style="list-style-type: none"><li>• Some drugs may also be detected in this sample if it is collected within 24 hours of ingestion. If this is a consideration, collect additional blood for drug analysis.</li><li>• Be sure to cleanse the arm with a non-alcoholic solution.</li></ul>

<b>If ingestion of drugs is suspected within 96 hours of the examination, collect the first available urine specimen.</b>
<ul style="list-style-type: none"><li>• If the patient must urinate prior to the medical examination, the urine specimen for toxicology should be collected at that time.</li><li>• "Clean catch" or "mid-stream" sampling methods are unsuitable for urine toxicology specimens.</li><li>• Consult your local crime laboratory for recommended collection methods.</li></ul>

## CHAPTER X

### PHOTOGRAPHY

#### A. POLICIES AND CONSIDERATIONS

Photographs are recommended to supplement documentation of history and physical findings. They may be the only way to adequately document findings such as bite marks, bruises, or massive injuries.

- Photograph every potentially significant injury or finding.
- Photographs may be taken by trained medical forensic examination team members or be arranged with the local law enforcement agency.
- Patients may be concerned about privacy and modesty during photography. Sensitivity to these concerns should be exercised when deciding whether hospital personnel, a male or female law enforcement officer, or crime scene investigator takes the photographs.

#### B. PHOTOGRAPHIC PROCEDURES

Any good quality camera may be used as long as it can be focused for undistorted, close-up photographs and provides an accurate color rendition.

- Use a 35mm camera with a macro lens and appropriate flash attachment to adequately record small or subtle injuries.
- Digital imaging is gaining acceptance in some jurisdictions as long as certain safeguards are in place. Consult with the local District Attorney's Office.
- Use adequate lighting whether the source is natural, flood, or flash.
- Take close-up photographs of bite marks and other wounds with the film plane as parallel to the subject area as possible. Minimize tilting of the camera to avoid distortion of the pictures.
- Include an accurate ruler or scale for size reference in the photograph. The scale should be in close proximity to and in the same plane as the injury or item being photographed. (A right-angle ruler, available commercially from police supply companies, is recommended. Consult your crime laboratory for vendors).
- Include a color bar in the photograph in the first image of the roll or series to ensure accurate color reproduction.

- Link the patient's identity and the examination date to the photographs of injuries and/or findings. This can be accomplished by:
  - Including a picture of the patient's identification card on the roll; or
  - Using a camera databack that can be programmed with the patient's medical record number or another non-duplicative numbering system.
- Avoid obscuring the injury with the ruler, identification label, or color bar. At least one or two photographs should be taken without the scale and/or color bar to orient the injury and to demonstrate that important evidence was not covered up.
- Additional photographs taken with a tangential light source (flash) may be used to enhance textured or irregular surface findings (e.g., bite marks, focal swelling, etc.).

### **C. GENERAL FORENSIC PHOTOGRAPHIC TECHNIQUES**

At least three photographs of findings are required. These principles may be modified or adapted if multiple findings are in the same area.

- First, a "regional" or "orientation" photograph(s) showing the body part and the finding. (This shows the finding in the total context of the body region involved, as well as the anatomical orientation of the finding);
- Second, a close-up shot showing the whole finding; and
- Third, a second close-up using the scale to document size and camera position relative to the finding.

### **D. FORENSIC PHOTOGRAPHY COURSES**

The California Medical Training Center (CMTC) offers courses on forensic photography. See **Appendix B** for information on how to access CMTC courses.

## CHAPTER XIII

### CHILD DEATH REVIEW TEAMS

#### A. PURPOSES OF CHILD DEATH REVIEW TEAMS

Child Death Review Teams (CDRTs) are multi-agency, multi-disciplinary state and/or local teams that systematically review child deaths within a specific geographic area. They play a critical role in helping to identify child abuse and neglect fatalities and other preventable child deaths. Local CDRTs are often involved in the case management of child death investigations. State teams primarily serve the local teams or gather data for systems management and policy interventions. Many benefits have accrued from the work of CDRTs, including more accurate identification of child deaths due to child maltreatment, more effective determination of the underlying cause of suspicious deaths, identification of gaps and breakdowns in agencies and systems designed to protect children, and implementation of various prevention interventions.

##### 1. Penal Code Section 11166.7 establishes County Child Death Review Teams

Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death, or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.

In developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including but not limited to, the following:

- Experts in the field of forensic pathology;
- Pediatricians with expertise in child abuse;
- Coroners and medical examiners;

- Criminologists;
- District Attorneys;
- Child Protective Services staff;
- Law enforcement personnel;
- Representatives of local agencies involved with child abuse or neglect reporting;
- County health department staff who deal with children's health issues; and
- Local associations of professionals listed above.

## **2. Roles and responsibilities of Child Death Review Teams**

Child Death Review Teams may perform any or all of the following tasks:

- Review and assess whether child deaths are homicides associated with abuse or neglect;
- Review and assess the causes of all child deaths with the intent of identifying circumstances surrounding preventable deaths;
- Improve the criminal investigation and prosecution of child abuse homicides;
- Improve dependency investigations and the protection of surviving siblings;
- Serve as a quality assurance team for death investigations;
- Design and implement cooperative protocols for investigation of child deaths;
- Improve linkages, communication and coordination among law enforcement, social services, local health agencies, the District Attorney's Office, the coroner and others;
- Provide a forum for agencies to resolve conflicts;
- Collect uniform and accurate statistics on child deaths; and,
- Identify public health issues and make recommendations to county and state policymakers and legislators.

## **3. Team Membership**

Core members:

- County Medical Examiner or Coroner;
- Law Enforcement Agencies;
- Child Protective Services;
- District Attorney's Office; and
- Pediatrician (preferably with experience in child abuse evaluations).

Additional members:

- Child advocate;
- School representative;
- Fire Department or Emergency Medical Services;
- Mental Health representative;

- Liaison with the California Highway Patrol (CHP) (if available);
- Epidemiologist or data analyst (e.g., Office of Vital Statistics);
- Probation Officer; and
- Injury Control Specialist.

#### 4. Selection criteria

CDRTs systematically select child deaths for review using predetermined criteria. Usually cases are drawn either from the deaths reported to the coroner or from vital statistics death certificates. Many counties (e.g., small and mid-sized counties) review all child deaths, whereas larger counties may have more selective review criteria (e.g., only coroner cases). Age criteria usually range from selecting only children under 7 to selecting all children under 20. The most common age criterion is children under 18 years of age.

Examples of review criteria used by various teams:

- All children under age 18;
- Coroner's cases of all children's deaths;
- "Unexpected", "unexplained", or "suspicious" deaths;
- Deaths under a certain age;
- Deaths of children known to Child Protective Services; and
- Deaths from certain causes.

Recommended minimum criteria:

- All coroner child death cases; and
- All children under 18 years of age.

#### 5. Recommended "best practice" procedures

- Systematic intake and review of cases drawn by protocol from the coroner and/or vital statistics records;
- Teams function as a peer review, respecting confidentiality and sharing information across agency lines;
- Authentic peer review with no agency controlling or censoring the information, discussion, or activity of another;
- Multi-disciplinary team membership of investigative agencies with administrative support to collect, analyze, publish, and distribute the data locally for the Board of Supervisors, directors of public agencies, and in newspaper(s) for the public; and
- Capability for promoting and implementing basic or advanced procedures, policies, and prevention programs through team member agencies (e.g., County Health Department or Child Abuse Prevention Council) or other community resources.

## B. ROLE OF THE STATE CHILD DEATH REVIEW COUNCIL

The California State Child Death Review Council (CSCDRC), established under the auspices of the Department of Justice (DOJ), was organized to establish leadership at the state level with representatives from key state agencies and associations. This statewide council was established pursuant to Penal Code Section 11166.9. According to the legislative mandate, it shall be the duty of the CSCDRC to oversee the statewide coordination and integration of state and local efforts to address fatal child abuse and neglect, and to create a body of information to prevent child death. Goals of the State Council include:

- Create and maintain an integrated, automated statewide data system for all counties and relevant state agencies;
- Promote the use of standardized forms and data collection protocols;
- Foster communication between state and local teams, other states, federal agencies and national associations, including dissemination of data and a statewide directory;
- Address local, state, and federal policy legislation issues and guidelines;
- Seek additional resources and funding for county team efforts;
- Support the development of domestic violence death review teams;
- Promote increased awareness of the relationship between domestic violence and child abuse;
- Promote development of a model for small counties (e.g., multi-county teams or cluster groups for counties with populations under 20,000);
- Raise visibility of child deaths and child death review teams through public education programs and the annual state report;
- Promote education and training for child death review team members;
- Develop an evaluation process to assess team effectiveness;
- Encourage continued research efforts at the state and federal level regarding child deaths and related issues; and
- Provide training and technical assistance to local teams.

This chapter is a condensed version of the articles entitled "Child Death Review Teams" by Michael Durfee, M.D. and Stephen J. Wirtz, Ph.D. from the book Child Abuse and Neglect: Guidelines for Identification, Assessment, and Case Management, published by Volcano Press, 2003 ([www.volcanopress.com](http://www.volcanopress.com)).

This publication contains extensive chapters on the identification, assessment and case management of various forms of child abuse and neglect written by over 95 experts in the field. This project was partially funded by the Governor's Office of Criminal Justice Planning (now the Governor's Office of Emergency Services), State Maternal and Child Health, and Volcano Press, Inc. as a public/private partnership.

## CHAPTER XIV

### MENTAL HEALTH AND DEVELOPMENT ISSUES AND REFERRALS

#### A. PSYCHOLOGICAL AND BEHAVIORAL OUTCOMES ASSOCIATED WITH CHILD PHYSICAL ABUSE

##### 1. Psychological and Social Problems Associated with Physically Abused Children

- Post-traumatic Stress Disorder (PTSD);
- Generalized anxiety;
- Depression;
- Withdrawal;
- Feeling different from others and socially isolated;
- Poor interpersonal social skills; and
- Poor school performance and/or underachieving

##### 2. Behavioral problems associated with physically abused children

- Difficult or aggressive behavior;
- Oppositional and/or defiant behavior;
- School problems; and
- Bullying and fighting behavior

##### 3. Recommended mental health treatment modalities

- Individual therapy;
- Group therapy;
- Parent-Child Interaction Therapy (PCIT); and
- Home visiting programs

#### B. PSYCHOLOGICAL AND BEHAVIORAL OUTCOMES ASSOCIATED WITH CHILD NEGLECT

##### 1. Psychological, developmental, and behavioral outcomes associated with child neglect

- Poor impulse control and creativity;
- Poor academic performance;
- Poor interpersonal social skills;
- Poor language comprehension;
- Speech delays;
- Lower IQ scores;
- Not "ready to learn" in school;
- Withdrawn and reticent to participate in activities;
- Depression;

- Anxiety; and
- Vulnerability for developing alcohol and drug abuse problems and for developing significant mental health problems

## **2. Recommended treatment modalities**

- Home visiting programs;
- Individual therapy; and
- Group therapy

## **C. MENTAL HEALTH TREATMENT**

### **1. Indicators for mental health treatment for abused and neglected children**

- History of neglect, physical and sexual abuse;
- Death of a sibling or a parent;
- Child or parent history of alcohol and/or drug abuse;
- Depression, sadness, withdrawal and avoidance of others, fearful;
- Angry, agitated;
- Signs of stress (e.g., unable to go to sleep, wakes during the night, eating problems, quick temper, easily frustrated);
- Acting out behavior (e.g., aggressive with peers, caregivers, teachers);
- History of torture;
- Mistreatment of animals;
- Firesetting;
- School problems (e.g., poor grades, poor concentration, little participation in activities);
- Change or deterioration of behavior;
- Suicidal ideation;
- Risk of placement disruption due to behavioral difficulties;
- Difficulties with self-care not due to developmental disability;
- Hallucinations or delusions; and
- History of receiving psychotropic medication.

## 2. Purpose and types of mental health treatment

The purpose of mental health treatment is to alleviate psychological and behavior symptoms and to facilitate the development and maintenance of healthy functioning across an individual's life domains (e.g. home, work, or school). The primary treatment modalities are:

- Individual therapy (e.g., various psychodynamic therapeutic models, sand tray, cognitive-behavioral therapy, and play therapy);
- Dyadic therapy (e.g., Parent-Child Interaction Therapy);
- Group therapy; and
- Family therapy.

Home-based and family-centered service approaches may also be helpful in supporting children and families. Home visiting programs, family resource centers, family conferencing, and wraparound social service support models are being developed in many communities to enhance existing systems of care.

## 3. Indicators for a psychological evaluation

Sometimes the clinical or psychosocial assessment indicates a need for a psychological evaluation to obtain more detailed information regarding the child's psychological functioning or when the diagnosis is unclear. For a treatment plan to be successful, it is important to know, for example, whether the child is suffering from Post Traumatic Stress Disorder (PTSD) or has Attention Deficit Hyperactivity Disorder (ADHD) because the symptoms can be similar but the treatment plans are different.

Psychologists are the only mental health professionals accredited to perform psychological testing and evaluation, and they employ a battery of tests that evaluate:

- **Cognitive functioning**  
Processing information, learning strengths and weaknesses, memory, verbal and nonverbal abilities, and academic abilities.
- **Affective functioning**  
Emotions, fantasies, and feelings.
- **Adaptive functioning**  
How an individual functions in the world in areas such as communication, daily living skills and socialization.

- **Pathological functioning**  
Ways in which the individual's internal conflicts and drives distort or overwhelm the ability to deal effectively with the demands of external reality.
- **Personality**  
Clinical symptoms, personality traits and patterns, and interpersonal functioning.
- **Developmental functioning**  
Cognitive, communication, social, adaptive, and/or motor development.

#### 4. **Psychological testing**

Psychological testing can address these questions about an individual:

- What are the client's intellectual strengths and limitations?
- Is there evidence of neurological immaturity or impairment?
- What is the nature of past knowledge and achievements, interests, and aptitudes?
- How adequate is reality testing?
- What is the quality of interpersonal relationships?
- What are the adaptive strengths (application of assets and liabilities to new problems, flexibility of approach, persistence, frustration tolerance, and reaction to novelty)?
- To what degree are impulses maintained under control (under-controlled or over-controlled)?
- How does the person defend psychologically (protect the self from feelings, ideas, and experiences that create anxiety through avoidance, repression, fighting or aggression, etc.) against unacceptable internal needs and demands or external experiences? How rigid are the client's defenses?
- What are the areas of conflict?
- Does the child have a psychiatric disorder?
- What is the child's developmental functioning?
- What treatment strategies and services would be most effective in improving functioning?
- What support services would be helpful to the parents or caregivers?

## 5. Indicators for a psychiatric evaluation

Psychiatric evaluations are sometimes needed to evaluate complex issues that may need to be resolved with hospitalization or medication support for relief of symptoms. Psychiatric evaluations are helpful with parents and children in cases involving:

- Previous psychiatric history;
- Psychotic symptoms such as hallucinations (e.g. , hearing voices), delusional thinking (odd or magical beliefs) or bizarre ideation;
- Suicidal ideation or attempts or self-destructive behaviors;
- Significant anxiety (fears/worrying) and depression (sadness/withdrawal/anger/passivity);
- Episodes of dissociation, (i.e. "spacing out");
- Inattention, forgetfulness, distractibility, or difficulty concentrating;
- Aggressive outbursts (whether toward others or animals) or firesetting;
- Hyperactivity or excessive energy;
- Changes in sleeping or eating patterns;
- Pain or any medical symptom that does not have medical basis;
- Regressed behaviors (e.g., bedwetting in a previously "dry" child);
- Inappropriate sexualized behaviors; and/or,
- Obsessive thoughts or compulsive behaviors.

## D. CHILD DEVELOPMENT EVALUATIONS

### 1. Indicators for making a referral for a developmental evaluation

Early diagnosis gives the child with developmental disorders an important head start in school or identifies reasons behind school problems. It is especially critical that a treatment plan be determined and implemented before or during the child's early school years. Guidelines for referral for a developmental evaluation include:

- Delays in reaching early developmental milestones (such as sitting, crawling, babbling or using words, and learning new social or play skills);
- Language delay, cognitive delay, fine and gross motor skill delay;
- Hyperactivity or behavior problems;
- Regression (loss) of skills;

- School or learning problems;
- Atypical behaviors (e.g., inability to interact or play with other children, inattention, daily living skill and self-care deficits);
- History of prenatal drug exposure, low birth weight or prematurity;
- Inability to understand or follow directions, or inability to explain ideas or speak clearly; and/or
- Children with histories of child abuse and neglect.

## 2. Formal Developmental Evaluation

A formal child developmental evaluation requires a multi-disciplinary team which includes a clinical psychologist with specialized training in child development and developmental disorders, a Developmental-Behavioral Pediatrician, and a social worker with training in child development. Assessment requires knowledge of typical and atypical development, cultural and social aspects of behavior, psychometric concepts, multiple diagnostic measures and techniques, ethnical/legal issues and an understanding of the child welfare and other intervention service systems.

This chapter is a condensed version of the article entitled "Developmental Issues in Abused and Neglected Children" by Theresa Witt, Ph.D. and Robin Lee Hansan, M.D. from the book Child Abuse and Neglect: Guidelines for Identification, Assessment, and Case Management, published by Volcano Press, 2003 ([www.volcanopress.com](http://www.volcanopress.com)).

This publication contains extensive chapters on the identification, assessment and case management of various forms of child abuse and neglect written by over 95 experts in the field. This project was partially funded by the Governor's Office of Criminal Justice Planning (now the Governor's Office of Emergency Services), State Maternal and Child Health, and Volcano Press, Inc. as a public/private partnership.

**COMMISSION ON STATE MANDATES**

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November 12, 2009

Leonard Kaye, Esq.  
County of Los Angeles,  
Auditor-Controller's Office  
500 West Temple Street, Room 525  
Los Angeles, CA 90012-2766

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

**RE: Outcome of Prehearing and Tentative Hearing and Comment Schedules  
Proposed Parameters and Guidelines and Reasonable Reimbursement Methodology  
Interagency Child Abuse and Neglect (ICAN) Investigation Reports, 00-TC-22  
Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7,  
11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code  
Section 11161.7), 11169, and 11170;  
Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; and Subsequent Statutes  
Through Statutes 2000, Chapters 287 and 916;  
California Code of Regulations, Title 11, Sections 901, 902, and 903;  
Department of Justice Forms SS 8572 and SS 8583  
County of Los Angeles, Claimant**

Dear Mr. Kaye:

The Commission on State Mandates conducted a third prehearing on October 29, 2009, on the parameters and guidelines for the above-named matter.

At the prehearing it was determined that the proposed reimbursable activities that are being circulated in surveys used to develop a reasonable reimbursement methodology are not currently included in the proposed parameters and guidelines. Claimant, County of Los Angeles committed to submitting proposed revised parameters and guidelines that include these reimbursable activities. Once the revised parameters and guidelines are submitted, Commission staff will circulate them for comment. These comments will assist Commission staff in recommending what activities are reimbursable, which will assist the claimant and parties in developing the proposed reasonable reimbursement methodology.

Claimant also committed to continue working on the reasonable reimbursement methodology during the comment process so that adoption of the parameters and guidelines will not be further delayed.

Please contact me at (916) 323-8217 if you have questions.

Sincerely,

NANCY PATTON  
Assistant Executive Director



**JOHN CHIANG**  
**California State Controller**  
Division of Accounting and Reporting

April 1, 2010

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

**RE: Revised Proposed Parameters and Guidelines**  
*Interagency Child Abuse and Neglect (ICAN) Investigation Reports, 00-TC-22*  
Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7,  
11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code  
Section 11161.7), 11169, and 11170;  
Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; and Subsequent Statutes  
Through Statutes 2000, Chapters 287 and 916;  
California Code of Regulations, Title 11, Sections 901, 902, and 903;  
Department of Justice Forms SS8572 and SS8583  
County of Los Angeles, Claimant

Dear Ms. Higashi:

We have reviewed the revised proposed parameters and guidelines for the above named program as communicated by the Commission on February 10, 2010. Comments and recommendations follow; proposed additions are underlined and deletions are indicated with strikethrough:

**I. SUMMARY OF THE MANDATE**

**Page 21** On December 19, 2007 the Commission on State Mandates (Commission)-issued adopted a Statement of Decision [00-TC-22]

**III. PERIOD OF REIMBURSEMENT**

**Page 22** 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...~~

**COMMENT:** Chapter 6, Statutes of 2008 (effective February 16, 2008), eliminated

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the option of filing an estimated reimbursement claim.

#### IV. REIMBURSABLE ACTIVITIES –

**Page 22** To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except where ~~standard cost-claiming~~ reasonable reimbursement methodology rates are adopted ~~is permitted~~ as set forth in Section IV B

**COMMENT:** The term “reasonable reimbursement methodology” means a formula for reimbursing local agency and school districts mandated by the state. (GC 17518.5)

**Page 23** ~~IV B. Standard Costs~~ Reasonable Reimbursement Methodology

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

#### GENERAL COMMENTS:

The activities specified in Section IV B do not clearly identify the mandated activities in the Statement of Decision adopted by the Commission on December 19, 2007.

- SCO requests these activities with standard times be correlated to the reimbursable activities specified on the Statement of Decision
- The activities need to be segregated between One-time and On-going Activities
- Each activity may contain supervisory review and approval which should not be duplicated in the indirect cost rate
- All reimbursable and non-reimbursable activities should be clearly identified
- SCO is reserving the right to comment on the recommended Reasonable Reimbursement Methodology times established prior to approval

**Page 24** **IV.C. Reimbursable Activities**  
 Claimants must use ~~a combination of actual cost and or standard cost methodologies~~ reasonable reimbursement methodology rates adopted by the Commission, but ~~should take care to ensure that the same reimbursable activity is not claimed under both methods.~~

**COMMENT:** We recommend that only RRM rate be used if adopted by the Commission.

**Page 25** One-time Activities:

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

Ongoing Activities:

- B. ~~Periodically, Participation in meetings~~ with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.

One-time Activities:

- C. ~~Annually, Develop and~~ 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. (One time per employee)
- D. ~~Periodically, to Develop, update or obtain~~ or procure computer software and ~~obtain~~ equipment necessary for ICAN cross-reporting and reporting to DOJ. Prorate only the costs related to the mandate.

Ongoing Activities:

- E. ~~Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary findings. 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. Gather and evaluate evidence when reasonably necessary to make evidentiary findings on suspects and victims. Victim costs include medical exams for sexual assault and/or physical abuse, mental health exams, and 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.~~

One-time Activities:

- A. ~~Due process costs incurred by law enforcement and county welfare agencies to~~ Develop and ~~maintain~~ establish ICAN due process procedures reasonably necessary to comply with deferral due process procedural protections under the 14<sup>th</sup> Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI].

**COMMENT:** We recommend that reimbursable activities be delineated between One-time and Ongoing Activities.

**Page 26    *Reporting Between Local Departments***

***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:

- l. Report by telephone, fax or electronic transmission 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~~11165.6 except acts or omissions coming within subdivision 9(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j)).

**Page 27    A county welfare department shall:**

- l. Report by telephone, fax or electronic transmission 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~~11165.6 except acts or omissions coming within subdivision 9(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j)).

- 7. Send a written report thereof within 36 hours of receiving the information concerning the incident to ~~any~~any agency...

**Page 28    *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:***

- 7. Report by telephone, fax or electronic transmission immediately, or as soon as practically possible Penal Code section ~~1116.5~~11165.6 except acts or omissions coming within subdivision 9(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j)).

- l. Send a written report thereof within 36 hours of receiving the information concerning the incident to ~~any~~any agency...

**Page 28    *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 ~~reported~~ reported to law enforcement

**Page 29** *Additional Cross-Reporting in Cases of Child Death:*

*A city or county law enforcement agency shall:*

- ~~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).)~~

**COMMENT:** According to the Statement of Decision adopted on December 19, 2007, this activity is to be performed by the County Welfare Department.

*A county welfare department shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Penal Code section 11166.9, subdivision (k), now section 11174.34, subdivision (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. (Penal Code Section 11166.9, subdivision (l), now section 11174.34, subdivision. (l).)

- Page 30**
- Enter information into the CWS upon notification that the death was subsequently determined not to ~~be~~ related to child abuse...

**Page 30** *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... filed with the Department of Justice. (Penal Code Section ~~11166.9~~ 11169 subdivision (b)).

- Page 31**
- Notify, in writing, the person listed in the Child Abuse Central Index... The notification shall include the name of the reporting agency and the date of the report. (Penal Code, Section 11170, subdivision (b) (5), now subdivision (b) (7).)

**Page 31** *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... (Penal Code Section 11170, subdivision (b) (6) (A), now ~~(b)(8)(10) (A)~~).

*Any city or county law enforcement agency, county probation department, or county welfare shall: ~~(j)->~~*

**Page 32** *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 investigation reports...for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to GC sections 26202 (cities) and 34090 (counties).)

Please contact Ellen Solis at (916) 323-0698, or Ginny Brummels at (916) 324-0256, if you have any questions.

Sincerely,



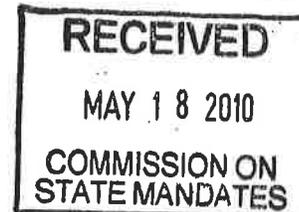
JILL KANEMASU, Chief  
Bureau of Payments

JK/GB/ecs



COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

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JOHN NAIMO  
JUDI E. THOMAS

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 18th day of May, 2010, I served the attached:

Documents: Los Angeles County's Review of State Agency Comments on its Draft Parameters and Guidelines (Ps&Gs) for the Interagency Child Abuse and Neglect (ICAN) Investigation Reports Test Claim and Revised Ps&Gs and Proposed Time Standards, including a cover letter of Wendy L. Watanabe, narrative, revised Ps&Gs and proposed time standards, and nine Exhibits, now pending before the Commission on State Mandates (00-TC-22).

upon all Interested Parties listed on the attachment hereto and by

- by transmitting via PDF e-mail on the above service date, the document(s) listed above to the Commission on State Mandates and mailing on the above service date the above original-signed documents to Commission's office.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

**PLEASE SEE ATTACHED MAILING LIST.**

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of May, 2010, at Los Angeles, California.

Lorraine Hadden

Commission on State Mandates

Original List Date:	7/6/2001	Mailing Information:	Draft Staff Analysis
Last Updated:	3/22/2010		
List Print Date:	05/13/2010		<b>Mailing List</b>
Claim Number:	00-TC-22		
Issue:	Interagency Child Abuse and Neglect (ICAN) Investigation Reports		

Related Matter(s)

01-TC-21 Child Abuse and Neglect Reporting

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Mr. Daniel Carrigg League of California Cities 1400 K Street, #400 Sacramento, CA 95814	Tel: (916)658-8200 Fax: (916)658-8240
Ms. Paula Higashi Executive Director Commission on State Mandates 980 Ninth Street, Suite 300 Sacramento, CA 95814	Tel. (916) 323-3562

Mr. Dan Scott Special Victims Bureau 11515 Colima Rd, D103 Wittier, CA 90604	Tel: (562)946-8282 Fax:
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**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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WENDY L. WATANABE  
AUDITOR-CONTROLLER

MARIA M. OMS  
CHIEF DEPUTY

May 17, 2010

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS  
JOHN NAIMO  
JUDI E. THOMAS

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

Dear Ms. Higashi:

**LOS ANGELES COUNTY'S REVIEW OF STATE AGENCY COMMENTS  
REVISED PARAMETERS AND GUIDELINES AND PROPOSED TIME STANDARDS  
INTERAGENCY CHILD ABUSE AND NEGLECT (ICAN) INVESTIGATION REPORTS**

The County of Los Angeles respectfully submits its review of state agency comments on the ICAN parameters and guidelines (Ps&Gs) which was filed with the Commission on January 21, 2010.

A revised set of ICAN Ps&Gs, including a new law enforcement 'reasonable reimbursement methodology', is proposed.

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

Very truly yours,

Wendy L. Watanabe  
Auditor-Controller

WLW:MMO:JN:CY:lk  
H:\SB90\5 15 2010 ICAN Response\cover letter

Enclosure

Executive Summary  
Los Angeles County's Review of State Agency Comments  
Revised Parameters and Guidelines and Proposed Time Standards  
Interagency Child Abuse and Neglect (ICAN) Investigation Reports [00-TC-22]

In California, local agencies respond to approximately 700,000 child abuse referrals a year. In about 24,000 cases, a child abuse report is filed with the State Department of Justice. Under ICAN, the Legislature has devised a State-mandated system to sift through the many referrals to find and protect the abused child.

On December 6, 2007, the Commission on State Mandates approved the County's 'test claim' and found that ICAN mandated local agencies to investigate and report child abuse and that those duties were reimbursable. On January 21, 2010, the County filed 'parameters and guidelines' (Ps&Gs) to specify terms and conditions of reimbursement. These included standard times for computing the costs of repetitive local law enforcement and county welfare agency tasks, permitted under 'reasonable reimbursement methodology' (RRM) provisions.

State agency comments support the concept of using RRM provisions to simplify the process of claiming ICAN costs. Regarding social service costs, there was no objection to the County's proposed RRM. Regarding the law enforcement RRM, the State Department of Finance and the State Department of Social Services objected that the County's RRM included activities that were not necessary in conducting a 'limited investigation'.

The County re-examined its law enforcement RRM and now proposes a streamlined three-tiered classification of required investigations. Those investigations that quickly result in a finding of no child abuse, based on preliminary information, are classified as level 1. These take 102 minutes to complete. Those investigations that result in a finding of no child abuse, but only after a patrol officer investigation, are classified as level 2. These take 268 minutes to complete. Those investigations that result in a finding of reportable child abuse and require an in-depth 'active investigation', are classified as level 3. These take 838 minutes to complete.

The State Controller's Office agreed with the County's proposal to reimburse the costs of reasonably necessary tests and procedures in conducting a level 3 investigation on a case by case basis using the actual cost method.

Los Angeles County's Review of State Agency Comments  
Revised Parameters and Guidelines and Proposed Time Standards  
Interagency Child Abuse and Neglect (ICAN) Investigation Reports [00-TC-22]

This review addresses State agency comments on Los Angeles County's (County) draft ICAN parameters and guidelines (Ps&Gs) filed with the Commission on State Mandates (Commission) on January 21, 2010.

In light of the concerns and findings of the State commentators (discussed below), the County has revised its Ps&Gs, including its law enforcement 'reasonable reimbursement methodology' (RRM). This RRM permits claiming the costs of repetitive law enforcement tasks using statewide standard times.

The County's original social service RRM received no negative comments and so remains unchanged in the (attached) Ps&Gs revision.

Detailed commentary was received from the State Department of Finance (Finance), State Controller's Office (SCO), and State Department of Social Services (SDSS).

A major area of concern was the scope of law enforcement investigation activities in the County's RRM. Finance and SDSS contend that only a 'limited investigation' is required to prepare and submit the Department of Justice (DOJ) reporting form (SS8583), not the 'active investigation' incorporated in the County's RRM.

'Limited Investigations'

Ms. Nona Martinez, Finance's spokesperson, contends that the law enforcement investigation activities that the County lists under level 3 and level 4 are not reimbursable. She maintains that only a 'limited investigation' is required under Commission's ICAN Statement of Decision. She indicates that:

“ Finance believes, as does the (State) Department of Social Services (DSS), that the proposed RRM inappropriately includes the totality of its law enforcement response to reports of child abuse, and all activities leading up to a full criminal prosecution. As a result, Finance believes that the activities in levels 3, 4 and 5 of the RRM extend beyond the limited investigation approved in the Statement of

**Law Enforcement Services  
Proposed Reasonable Reimbursement Methodology (RRM)  
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 Special Victims Bureau as a detective and sergeant specializing in child abuse investigations.

I declare that I have reviewed the comments filed by the State Department of Finance (Finance) on March 30, 2010 regarding the subject RRM, indicating that "... Finance concurs with DSS (the State Department of Social Services) and believes that some of the activities in Levels 1 and 2 are sufficient to comply with the mandated reporting requirement" but that "... Finance believes that the activities in levels 3, 4 and 5 of the RRM extend beyond the limited investigation approved in the Statement of Decision (SOD) for the purpose of preparing and submitting Form SS 8583 to the Department of Justice (DOJ)".

I declare that the SOD, cited by Finance, indicates, on pages 40-41, that an 'active', not a 'limited', investigation "... is necessary in order to complete the state "Child Abuse Investigation Report" Form SS 8583" and that "... before completing a child abuse investigative report form and forwarding it to the state ... an investigation sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive", as defined by Penal Code section 11165.12, is newly mandated".

I declare that the California Department of Justice (DOJ), in their 2005 "Guide to Reporting Child Abuse to the California Department of Justice, on page 15, 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 I have reviewed the County's initial law enforcement ICAN RRM levels and, in light of the above minimum investigation standards for purposes of complying with DOJ's reporting requirements, propose their replacement with three different levels which are detailed in Exhibit 1, attached to this filing.

I declare that it is my information or belief that the replacement RRM includes only activities that are reasonably necessary in providing reimbursable child abuse services.

I declare that it is my information or belief that those activities necessary to meet additional criminal prosecution duties are not included in the replacement RRM.

I declare that it is my information and belief that the omission of one or more ICAN activities described in Exhibit 1 could impair the requirement to conduct an "active investigation" as defined in the California Department of Justice (DOJ) Form SS 8583.

I declare that it is my information and belief that the omission of one or more ICAN activities described in Exhibit 1 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 1 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 1 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.

4.23-10 @ W. H. J. W. CO., CA  
Date and Place

  
Signature



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

Exhibit 4

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-3873  
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE  
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

MARIA M. OMS  
CHIEF DEPUTY

ROBERT A. DAVIS  
JOHN NAIMO  
JUDI E. THOMAS

**Los Angeles County's Review of State Agency Comments  
Revised Parameters and Guidelines and Proposed Time Standards  
Interagency Child Abuse and Neglect (ICAN) 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] and proposed time standards for the Interagency Child Abuse and Neglect [ICAN] 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 21, 2010 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.

5/11/10, Los Angeles, CA

Date and Place

Signature

Date of Hearing: May 3, 2011

Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Tom Ammiano, Chair

AB 717 (Ammiano) – As Amended: April 25, 2011

SUMMARY: Amends existing provisions of law relating to the Child Abuse Central Index (CACI). Specifically, this bill:

- 1) Changes CACI to include reports only of substantiated cases.
- 2) Removes inconclusive and unfounded reports from CACI.
- 3) Provides that any person listed in CACI who has reached age 100 is to be removed from CACI.
- 4) Provides that on or after January 1, 2012, law enforcement need no longer report to the Department of Justice (DOJ) cases law enforcement investigates of known or suspected child abuse or severe neglect.
- 5) Allows any person listed on the CACI before January 1, 1998 who did not receive notice of inclusion to request a hearing from the reporting agency within three years of learning of his or her CACI listing.
- 6) Allows any person listed on the CACI on or after January 1, 1998, but before March 1, 2008, to request a hearing to request a hearing from the reporting agency.
- 7) Requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report.
- 8) Requires the DOJ to remove a person's name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report.

EXISTING LAW:

- 1) Requires that any specified mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment whom the reporter knows, or reasonably suspects, has been the victim of child abuse, shall report it immediately to a specified child protection agency. [Penal Code Section 11166(a).]
- 2) Requires specified local agencies to send the California DOJ reports of every case of child abuse or severe neglect that they investigate and determine to be either true or inconclusive, but not those that are found to unfounded. [Penal Code Section 11169(a).]

- 3) Defines the following types of suspected child abuse or neglect reports:
  - a) "Unfounded report" is a report that is determined by the investigator to be false, inherently improbable, an accidental injury, or not to constitute child abuse or neglect, as defined.
  - b) "Substantiated report" is a report that is determined by the investigator based on some credible evidence to constitute child abuse or neglect, as defined.
  - c) "Inconclusive report" is a report that is determined not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine if child abuse or neglect, as defined, has occurred. (Penal Code Section 11165.12.)
- 4) Directs the DOJ to maintain an index, referred to as the CACI, of all reports of child abuse and neglect submitted as specified. [Penal Code Section 11170(a)(1).]
- 5) Allows DOJ to disclosure information contained in the CACI to multiple identified parties for purposes of child abuse investigation, licensing, and employment applications for positions that have interaction with children. [Penal Code Section 11170(b).]
- 6) Requires DOJ to provide written notification to a person listed in the CACI. [Penal Code Section 11169(b).]
- 7) Allows an identified child abuser to obtain the report of suspected abuse and information contained within his or her CACI listing. [Penal Code Section 11167.5(b)(11).]
- 8) Requires that information from an inconclusive or unsubstantiated suspected child abuse or neglect report shall be deleted from CACI after 10 years if no subsequent report concerning the suspected child abuser is received within the 10-year period. [Penal Code Section 11170(a)(3).]

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement: According to the author, "AB 717 is a response to several court decisions which collectively state that CACI is unconstitutional because it does not notice all people of their inclusion in CACI, offer a due process hearing, or give people listed in CACI with unsubstantiated cases of abuse or neglect a procedure to have their names removed from the database.

"AB 717 would make CACI constitutional by only including the reports from local agencies of investigations that are substantiated. Agencies that have previously filed substantiated reports that have been found unsubstantiated shall notify DOJ for removal from CACI. Law enforcement agencies would be no longer required to report investigations to CACI.

"Additionally, any person who has not received notice of their CACI listing prior to January 1, 1998, when notice was not legally required, may request a due process hearing as well as any person after January 1, 1998, who received notice, but not a hearing. Any case

that has been found unsubstantiated through a due process hearing shall be removed from CACI.

"Finally, AB 717 would require the DOJ to purge all unsubstantiated listings and all listings when the person has reached 100 years of age."

2) CACI Litigation Background:

- a) **The Child Abuse and Neglect Reporting Act:** In 1963, the Legislature began requiring physicians to report suspected child abuse. [See *Smith v. M.D.* (2003) 105 Cal.App.4th 1169 (discussing evolution of child abuse detection laws).] Two years later, the Legislature expanded the reporting scheme to require that instances of suspected abuse and neglect be referred to a central registry maintained by DOJ. In the early 1980s, the Legislature revised the then-existing laws and enacted the Child Abuse and Neglect Reporting Act (CANRA), which created the current version of the CACI. These revisions did not require that listed individuals be notified of the listing, nor were individuals even able to determine whether they were listed in the CACI.
- b) ***Coe v. City of Los Angeles*:** In 1997, the Legislature revamped CANRA to provide more protections to persons listed in CANRA. As a result, a child protective agency placing a person's name on CACI had to inform a person of that fact. Also, CANRA was changed to require a purge of inconclusive reports on the CACI after 10 years, and to allow a listed person to access his or her information. The legislative changes had the effect of mooted the *Coe* lawsuit. It is possible that a person listed in the CACI before the effective date of the legislative changes, January 1, 1998, might still not know that he or she is on the CACI.
- c) **The *Burt* Litigation:** In *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, the Court of Appeal held that a CACI listing implicates an individual's state constitutional right to familial and informational privacy, thus entitling the person to due process. (*Id.* at pp. 284-285.) Although the CACI does not explicitly grant a hearing for a listed individual to challenge placement on the CACI, the statutory scheme contained an implicit right to a hearing. (*Id.* at p. 285.) The court declined to provide guidance on what procedures that hearing should include. The court merely stated that the county social services agency was required to afford a listed individual a "reasonable" opportunity to be heard. (*Id.* at p. 286.)
- d) **The *Gomez v. Saenz* Settlement:** The lawsuit settlement provided due process rights for individuals listed on the CACI by county social service agencies, but not law enforcement agencies. The settlement required that, beginning March 1, 2008, the agencies provide notice of a CACI listing and of the right to request a grievance hearing. Effective March 1, 2008, counties are to provide two forms to individuals who are referred for listing. In the notice form, the county must include case specific information discovered in the child abuse investigation. The second form is the one to be used to request a grievance hearing. When the form is sent, the hearing procedures as well as the county contact information are attached.
- e) **The *Whyte* Litigation:** This litigation challenged DOJ's policy of prohibiting listed individuals from examining and challenging their CACI listings. A superior court

judgment determined that the DOJ's administration of the CACI violated not only the state constitutional right to privacy, but also the Information Practices Act of 1977. As a result, DOJ redrafted its regulations governing the CACI.

- f) *Humphries v. County of Los Angeles*: In a federal civil action, the Ninth Circuit Court of Appeals held that the stigma of being listed in the CACI and the statutory consequences of being listed constitute a liberty interest of which plaintiffs cannot be denied without due process. [*Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170, 1185.] The CACI violates the due process clause of the Fourteenth Amendment as it does not provide identified individuals a fair opportunity to challenge the allegations. (*Id.* at pp. 1200.) Specifically, the court found the current procedure provided to correct erroneous information submitted to the CACI by law enforcement is inadequate because "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." (*Id.* at p. 1192.) The person seeking review must hope the investigator is responsive. (*Id.* at p. 1193.)
- g) *Los Angeles County v. Humphries*: After the Ninth Circuit found the Humphries should get declaratory relief, attorney fees, and possibly damages, the County of Los Angeles appealed to the United States Supreme Court. (See *Los Angeles County v. Humphries* (2010) 131 S.Ct. 447.) The county argued that the Humphries should not have prevailed because they failed to show that their deprivation was the result of a county policy or custom as required by *Monell v. Department of Social Services* (1978) 436 U.S. 658, in which the Court held that local governments can be directly liable in a civil rights suit under 42 U.S.C. Section 1983 only when their action is the result of official policy or custom. Los Angeles County argued that it was simply following California law, and that it had not adopted an independent policy of its own. (*Id.* at p. 450.) The Court concluded the "policy or custom" requirement also applies when plaintiffs seek prospective relief, such as an injunction or a declaratory judgment. (*Id.* at p. 451.) Nothing in the statute or case law suggests that this causation requirement should change based on the form of relief sought. (*Id.* at p. 453.) The Humphries were not entitled to prospective declaratory relief or to damages.
- 3) Necessity for this Bill: This bill codifies several requirements addressed in court settlements as well as constitutional deficiencies noted in other cases.
- 4) CACI Criticism and Controversy: In a 2004 self-study, a California task force reported on a pilot program in San Diego County, where "DOJ discovered that approximately 50 percent of the 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 the CACI should be purged." (*Ibid.*) Not only does this create a problem for the individuals improperly listed, but the more false information is included in the CACI, the less useful CACI becomes as an effective tool for protecting children from abuse.
- 5) Argument in Support: According to Child and Family Protection Association, "AB 717 appropriately amends Sections 11169 and 11170 of the Penal Code to specify that only 'Substantiated' reports of child abuse or neglect shall be maintained in the Child Abuse

Central Index (CACI).

"Under current law, an investigation of child abuse or neglect results in a report that comes to one of 3 possible conclusions: (1) 'Unfounded'; (2) 'Inconclusive'; or (3) 'Substantiated' (PC 11165.12). Under current law, the Department of Justice is required to maintain in the CACI all 'Inconclusive' and 'Substantiated' reports (PC 11169 & 1170). Upon receiving a request pursuant to PC 11170, the Department of Justice furnishes information about individuals who are listed in the CACI.

"We believe that passage of AB 717 would bring about a very favorable change to current law. AB 717 will help many innocent individuals who, under current law, find themselves trapped in a legal/administrative system where it is extremely difficult to prove their innocence and to get their names removed from the CACI.

"AB 717, as currently written, would protect the reputation and very likely the ability of innocent individuals to apply for or retain specified employment, licensing, or volunteer status. These would be individuals who had been investigated on an allegation of child abuse or neglect where the conclusion of the investigation was 'inconclusive' and NOT determined to be 'substantiated.' "

6) Prior Legislation:

- a) SB 1312 (Peace), of the 2001-02 Legislative Session, would have made numerous changes to CACI including the purging of old reports. The provisions dealing with CACI were deleted before SB 1312 was chaptered.
- b) AB 2442 (Keeley), Chaptered 1064, Statutes of 2002, established the CANRA Task Force for the purpose of reviewing the act and CACI.
- c) AB 1447 (Granlund), of the 1999-2000 Legislative Session, made numerous changes to CACI including the purging of old reports. AB 1477 was never heard by the Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Child and Family Protection Association

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

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## Child Welfare and Foster Care Reform

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# The Child Abuse Registry – Part II – Victory in California

2012 October 3

Tags: Child welfare and foster care reform

Posted by ethoma

*There is a fine line between Unfounded and Inconclusive determinations. An Inconclusive determination automatically places an offender's name on the Child Abuse Central Index without conclusive evidence and a legal framework to ensure due process. This may give the appearance of "guilty until proven innocent," contrary to legal tradition.*

*–Solano County Grand Jury*

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### OVERVIEW

California's Child Abuse Central Index, or CACI, as it is commonly called, has been the subject of countless reviews, investigations, Grand Jury reports, and lawsuits. Yet, nothing ever seemed to change. At least not in a manner that would have meaningfully impacted the estimated 800,000 people whose names were listed on the Registry. Maintained by the California Department of Justice, the Registry "is not actively managed by the State. It is not routinely purged of erroneous or unsupported entries." Individual reporting agencies hold the responsibility for updating the database, something that they have historically been reluctant to do.

Among the more recent examinations of California's Child Abuse Registry were those of two Grand Juries. In its report, entitled *Health And Social Services Child Abuse Reporting*, the 2008-2009 Solano County Grand Jury explored these issues, following up on prior reports that it had issued. Thereafter, the 2009-2010 Orange County Grand Jury followed up with a report of its own, ominously entitled *CACI: Child Abuse Central Index: Guilty Until Found Innocent*.

## A VICTORY FOR FAMILIES

On October 14, 2011, Governor Edmund G. Brown Jr. signed into law Assembly Bill 717, introduced by Assemblymember Tom Ammiano (D-San Francisco) amending the Child Abuse Central Index. The newly revised statute went into effect on January, 1, 2012.

The Act was amended to include only “substantiated” claims of abuse or severe neglect. According to the Act, an agency “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 that is determined to be substantiated,” with the clear proviso that an agency “shall *not* forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is substantiated,” as defined in the revised Code.

The revised legislation states also that: “If a report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report.”

Much to their credit, both the Solano and Orange County Grand Juries went to great lengths in conducting their investigations, as the Orange County report explains:

The Grand Jury completed its study through interviews with Hot Line staff and emergency response investigators at Children and Family Services as well as in-depth discussions with the administrative and program leadership of the agency. The Grand Jury interviewed local police agencies and reviewed their policies and procedures. The Grand Jury obtained CACI definitions and requirements from the state Department of Justice and reviewed internal reports and documents issued by CFS and local police agencies. Additionally, the Grand Jury reviewed all appropriate state and federal guidelines regarding Child Abuse Central Index and reports published by prior California Grand Juries.

The extent to which these two critical reports may have played a decisive role in the passing of the legislation is a question best left open for historians, however the arguments they set forth are worthy of review by advocates seeking similar reforms in their own states.

## SOLANO GRAND JURY FINDINGS

Individuals whose names appear on the Registry often appeal the placement, however the appeal may or may not result in removal from the list. The Solano County Jury notes that it can be difficult and expensive to challenge a listing. During the timeframe of July 2006 to December 2008, Solano County residents listed on the Registry were only successful in challenging their listings between 10 to 50 percent of the time.

As the Solano Grand Jury explained, following an investigation, and using the information gathered, the Social Worker “makes one of three determinations” as defined in the California Penal Code:

❶ **Unfounded:** The report is determined by the investigator who conducted the investigation to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse. The person’s name is not submitted to be listed on CACI.

❷ **Inconclusive:** A report is determined by the investigator, who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to

determine whether child abuse and/or neglect have occurred. The person's name is placed on the CACI list and remains for 10 years (if no further incidents occur).

☛Substantiated: The report is determined by the investigator who conducted the investigation to constitute child abuse and/or neglect. The person's name is permanently placed on the CACI list.

Part of the problem are the burdensome and often-contradictory regulations that come with shifting mandates. The practical effect of all this, as the Jury explained, is that: "CPS does not have investigative manuals designed to teach and direct Social Workers in their duties and responsibilities in Solano County. The materials used by CPS comprise many binders containing broad guidelines provided by the State of California and the Northern California Training Academy. They are designed to assist employees and are not meant to be specific to Solano County. The manuals are voluminous, sometimes vague, and confusing. A reader would have to spend hours in researching a single subject."

This is not the first time that Solano County's Grand Jury had visited this particular issue. The 2008-2009 Jury echoed the findings of some of its prior reports:

☛There was an absence of manager signatures on reports documenting managerial review, decisions, and/or approval

☛When Social Workers prepared their reports based on their observations in the field, the content of the reports were sometimes altered by the supervisors and/or managers; consequently, Social Workers were given the option to refuse to sign altered reports or clarify in court testimony that they did not personally write portions of what might be viewed as evidence

☛There was confusion on the part of CPS staff regarding procedures and policies

☛There was oversensitivity to negative feedback

☛There was a lack of mutual accountability and teamwork at all levels

☛CPS has continued to demonstrate an inability to self-correct, although there have been internal and external attempts to correct these deficiencies; its organizational culture is subverting the achievement of the CPS mission.

The Jury found instances in which people who had not even been interviewed were nevertheless placed on the Registry, or who may not have been informed of an impending listing, or of their right to appeal. As the Jury concluded:

There is a fine line between Unfounded and Inconclusive determinations. An Inconclusive determination automatically places an alleged offender's name on the Child Abuse Central Index without conclusive evidence and a legal framework to ensure due process. This may give the appearance of "guilty until proven innocent," contrary to legal tradition.

For many years, family and child advocates have asserted that the presumption of innocence is turned upside-down when it comes to child abuse investigations. Many assert that this presumption of being "guilty until proven innocent" runs throughout the entire fabric of the child protection industry; from initial investigations through removals, as well as through the various stages of

administrative and legal proceedings that may follow.

## **ORANGE COUNTY'S EXAMINATION**

In 2009, "Orange County added the names of 792 county residents to the state list of child abusers based on investigations that did not establish sufficient evidence to say that abuse had occurred. The names of the accused were sent to the Child Abuse Central Index (CACI) in an Inconclusive category. Those accused with an inconclusive report can remain on the list for 10 years from the last report," begins Orange County's Grand Jury Report.

As is the case in all of California's Counties, the information is maintained in a centralized location by the state's Department of Justice, and this information "is made available to employers who have interaction with children, including schools, law enforcement, child welfare agencies, foster homes, adoption agencies, and licensed child care homes."

The Orange County study explains that the "process and guidelines for placing someone on the Child Abuse Central Index based on an Inconclusive finding are confusing, highly subjective and provide little protection for those individuals falsely accused of abuse." More to the point, the report came to the critical finding that:

The California Penal Code requires that a result of an Inconclusive finding be reported and placed on the Child Abuse Central Index because there is insufficient evidence to make a determination of whether abuse occurred.

This represents a conflict with the American legal principle of innocent until proven guilty.

The Jury notes that there are "numerous examples" in which a court finding in favor of an accused did not result in removal of the name from the Registry. Children and Family Services is not required to respond to a court action, the Jury explains, and the agency may on its own determine that there are other reasons to retain the name on list. Since Registry listings can be made without a criminal complaint even being filed, "there is no opportunity for the accused to prove innocence in a court of law."

## **THE CANRA TASK FORCE**

It was an Assembly Bill during California's 2001-2002 legislative session that established the the Child Abuse And Neglect Reporting Act Task Force, which came to be commonly known as the CANRA Task Force. The report itself candidly explains that: "Calls for legislative reform, as well as litigation, were the impetus for the creation of the CANRA Task Force."

By the time the Task Force came into being, Californians had been impacted by the state's reporting laws for forty years. Efforts at reforming the laws in the legislature failed to gain ground, hence a compromise measure was reached establishing the Task Force.

California's Child Abuse And Neglect Reporting Act was "premised on the belief that reporting suspected child abuse is fundamental to protecting children." 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; 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 statutory procedures for reporting have been deemed by California courts as being "essential" in accomplishing these goals, the report explains.

So, what exactly *was* the problem? In short, that there was a broad and grey area between a finding of “substantiated” and “unsubstantiated.” By definition, 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.”

As of 2004, the Index contained approximately 905,000 entries, listing about 810,000 suspects, and 1,000,000 potential victims. Per year, California’s Department of Justice received approximately 35,000 new reports to be added to the Index; some 10,000 inquiries for investigative purposes; and 40,000 inquiries for non-investigative functions.

“Although the Task Force followed its mandate to review the value of the Index in protecting children, the most prevalent calls for change were from individuals whose names had been placed on the Index as suspects,” the Task Force found.

“Additionally, individuals who believed their names had been unfairly placed on the Index as suspects contended that their inability to challenge placement of their name before being listed and their inability to remove their names afterwards, without expending significant monies on attorneys, amounted to a violation of their due process rights.”

One of the key findings of the Task Force was the wide discrepancies between Counties and how or whether they provided any avenue of due process to challenge a listing on the Registry:

Due to the expense and complexity of private litigation options, leaving such as the sole method to address due process concerns places an enormous hurdle before all suspects wishing to challenge a CACI listing and makes such a challenge all but impossible for low or moderate income suspects. The law already requires notice to suspects, but then provides no method to act on that notice if a suspect believes that the government’s action is inappropriate. While some counties appear to have informal mechanisms to address requests for listing removal, most do not appear to have such. In fact, it appears that there are still counties in which the notice requirement is not effectively in place. Such inconsistent access to process, if there is process at all, does not square with the concept of fairness and calls for some type of consistent, statewide process to be in place to address this issue.

The Task Force is concerned that a suspect’s county of residence should not determine the level of process available. The Task Force also believes it is unfair for residents of one county to have access to a governmental review at little or no cost as residents of another county are required to hire expensive counsel and file suit to obtain review.

In summary, while the Task Force made a few worthwhile recommendations, precious little meaningful change came of the effort. For historical purposes, its work perhaps stands as a highly detailed model of how *not* to run an abuse Registry.

## REMARKABLE RESILIANCY

As harmful as the Child Abuse Central Index may have been, it nevertheless enjoyed a remarkable resilience, having withstood several legal challenges.

In a case that gathered media attention, Catherine Donahue Burt, a chronic sufferer of migraines who took regular injections of Demerol, realized that her syringe had slipped out of her pajama pocket as she was putting her baby to sleep. She frantically called 911 for help.

“Paramedics and emergency-room doctors later determined that no Demerol had gotten into the baby’s system, according to Knight-Ridder News Service.

“But nearly a year later, Burt said she regrets making that call.”

It wasn’t so much that the police placed the child in the County’s “temporary custody pending completion and review of a full investigation of the incident” that did it. Two days later, the child was returned unharmed. Rather, Burt was informed that the result a “probe” by the County determined that her name was to be put on the Registry, without any recourse for an appeal.

Burt, herself a pharmacist, and her husband, a decorated navy pilot, fought to clear her name, and on June 30, 2004, victory arrived in the form of a Court of Appeals ruling that held that under the Constitution, “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.”

This was the first of the meaningful legal challenges to the Registry.

On July 27, 2004, the Orange County Board of Supervisors, in a closed-door session, by a vote of 3 to 2, voted to authorize “County Counsel to file a petition for review in the California Supreme Court in the case of Catherine Dohahue Burt v. County of Orange, et al.” Supervisors Wilson, and Silva voted in favor, and Supervisors Norby and Campbell voted against the proposal.

On December 6, 2005 — also during a closed-door session — the Orange County Board of Supervisors did a remarkable about-face, and in consultation with County Counsel unanimously approved a settlement in the Burt case.

*Burt v Orange County* was followed by *Gomez v. Saenz*. That lawsuit originated in July 2004, and it was settled on October 9, 2007. The suit addressed the rights of individuals whose names either are — or will be — listed on the California Child Abuse Central Index.

Based on the settlement agreement, beginning March 1, 2008, individuals were to be provided appropriate notice of their CACI listing, as well as of their right to appeal the listing via an administrative grievance procedure. In addition, the settlement allows individuals who may not have received a notice of their right to appeal prior to March 1, 2008, to challenge their continued listing on the CACI.

According to a Procedural Guide issued by the California Department of Social Services, keeping up with the legislative and judicial changes was becoming a fulltime job in and of itself, requiring several revisions to operating manuals along the way. The Guide explains:

Previously, in response to *Burt v. County of Orange*, DCFS established a process for individuals, who believe that DCFS incorrectly reported them to the Department of Justice or that their name was listed on the Child Abuse Central Index in error, to challenge DCFS’ action. However, because of the *Gomez v. Saenz* lawsuit, that process has been revamped to meet the requirements of the lawsuit settlement.

According to the updated procedures, under the terms of the *Gomez* settlement, the grievance officer conducting hearings challenging a listing on the Registry shall be:

• A staff or other person not involved in the investigation of the alleged child abuse or severe

neglect.

Neither a co-worker nor a person directly in the chain of supervision of any of the persons involved in the investigation of the alleged abuse or severe neglect unless the grievance officer is the Director or Deputy Director of DCFS.

Knowledge in the field of child abuse or neglect investigations and capable of objectively reviewing the complaint.

### **TAKE A LETTER, MARIA: THE NUTS AND BOLTS OF IMPLEMENTING GOMEZ**

In a letter addressed to all county directors on the state's Department of Social Services letterhead, Mary L. Ault, Deputy Director of the Department's Children and Family Services Division, informed one and all of the changes that the Gomez settlement would bring to day-to-day operations.

The letter, dated December 28, 2007, was addressed to All County Welfare Directors, All Child Welfare Services Program Managers, and Chief Probation Officers. The letter explained that:

The Gomez v. Saenz lawsuit originated in July 2004, and was settled on October 9, 2007. The lawsuit addresses the rights of individuals whose names either are or will be listed on the CACI. Based on the settlement agreement, beginning March 1, 2008 individuals are to be provided appropriate notice of their CACI listing as well as the right to appeal. In addition, the settlement allows individuals who may not have received a notice of their right to appeal prior to March 1, 2008, to challenge their listing on the CACI.

There were specific public notification requirements. Child welfare agencies and Community Care Licensing Division offices were "required to post for 30 days (in a prominent manner in locations to which the public has regular access) a notification informing the public of their right to determine whether or not their name is listed on the CACI."

These notifications were to be distributed prior to March 1, 2008. In addition to the posting of notifications, the settlement required publication of the same information in both English and Spanish newspapers that had widespread circulation.

The purging of the Registry itself was to begin *immediately*. Also to be purged were those files "where no underlying files exist," such as those that may have been destroyed as a result of floods or fires. (The true extent to which the estimated 800,000 files may have sat on the Registry without any supporting documentation may never be known.) The letter also specified the timeframes required for the great purge to begin:

#### **Next Steps**

"Because this is a legal settlement with specific requirements," the letter explained, "the activities must be carried out as specified in the settlement. It is important that the implementation of the activities is carried out in a consistent manner throughout the state in order to assure accurate notification and purging of unsupported CACI listings." The timelines for settlement activities follow:

Fall 2007

☛Begin purge process to remove from the CACI those names or dates for which supporting documentation is unavailable.

March 1, 2008

☛Post and Publish notifications of individual's right to determine CACI listing and to request grievance hearing

September 1, 2008

☛Survey to begin in 12 counties as noted in the settlement.

More detailed instructions regarding implementation were said to be forthcoming, and were to include "the required noticing forms and grievance procedures, as well as Q & A from the counties."

### **THE CONSTITUTION, DUE PROCESS, AND CHILD WELFARE WORKERS**

By May of 2009, the Central California Training Academy at California State University, Fresno, had established the *Gomez vs. Saenz Settlement: Training for Child Welfare Workers & Supervisors*. Much to their credit, the designers of the curriculum devote attention to the civil liberties that most citizens take for granted.

In a section of the training module under the heading "The Constitution, Due Process, and Child Welfare Workers," Constitutional protections against government actions are specifically explained to trainees, including the provisions of the Fifth and Fourteenth Amendments to the Constitution.

"The actions taken by child welfare services workers often affect people's liberty rights," the training module explains, citing as examples:

- ☛Parents have the liberty right of freedom of personal choice in matters of family life, including the right to raise their children.
- ☛Children have the liberty right to grow up in a permanent, secure, stable and loving environment, free from abuse or neglect.
- ☛A person accused of abuse or neglect has the liberty right to ensure that his or her "good name" and reputation are not stigmatized by false information maintained by the government, where it is likely that members of the public will see the damaging information.

The training module clearly explains the *rationale* underlying due process:

Remember what the framers of the Constitution had in mind when they created the Constitution — protecting the people from abuse by their government. Therefore, the due process protections set forth in the Fifth and Fourteenth Amendments to the Constitution are intended:

- ☛To protect individuals from unwarranted or arbitrary governmental intrusion.

☛To prevent the government from abusing its power over individuals.

After continuing on to describe the concepts of due process, substantive and procedural — including such vital elements as being provided with notice and having a meaningful opportunity to be heard — the training module hammers the point home to case workers and other child protection personnel in training, emphasizing:

You work for the County. California's county governments are considered subdivisions of State government. Bottom line:

**YOU represent the GOVERNMENT!!**

## **THE LUCRATIVE INDUSTRY OF REFORM**

The Bay Area Training Academy, operated by San Francisco State University, put together a similar curriculum, featuring a two-day conference to be held on December 2 and 3, 2008, on the topic of "Gomez v. Saenz Hearing Officer Training."

The first day focused on "background information and history on Gomez, during which Diane Brown and Mary Shepard, both of the Department of Social Services, were to "present an overview of the implications of Gomez including regulations and implementations.

Attendees on the second day of the conference were in for a treat. Not only did they enjoy a continental breakfast, but they were also treated to a seminar provided by Honorary Jose Banuelos, Presiding Administrative Law Judge of the Fresno Regional Office. The event was held at the Contra Costa Social Services Department, in Hercules, California, and the day two conference was restricted to hearing officers only.

Such training doesn't come cheap, in the child welfare industry. A memorandum sent out on City and County of San Francisco Human Services Agency letterhead, dated September 18, 2009, indicates that the Bay Area Training Academy had been awarded a generous grant of \$2,547,626 for training provided between July 1, 2006 through December 31, 2009. The substance of the letter was such that a modest increase of \$76,660 was to be allotted to the Academy, bringing its total for training to \$2,624,286.

The money was "for the provision of training services and curriculum development for the 'Strengthening Families, Community and Neighborhood Deciding as One' initiative; and, training and consultant services for Family and Children's services to ensure compliance with the Gomez v. Saenz Grievance Process, in the amount of \$76,660 for the period of October 1, 2009 to December 31, 2009."

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## **RELATED READING**

Governor Brown Press Releases.

Text of Assembly Bill 717.

CACI: Child Abuse Central Index, Guilty Until Found Innocent, Orange County Grand Jury 2009-10.

Health and Social Services Child Abuse Reporting, 2008-09 Solano County Grand Jury.

L.A. Superior Court Settlement Gomez v. Saenz.

Gomez v. Saenz Trainee Manual.

Burt v County of Orange(2004) 120 Cal.App.4th 273, 15 Cal.Rptr.3d 373, review den. Sept. 15, 2004.

Writeup on Burt case by Attorney Richard Gaines Heston.

Humphries v Los Angeles, 554 F. 3d 1170, Court of Appeals, 9th Cir.

Related Documents.

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West's Annotated California Codes Currentness

Penal Code (Refs & Annos)

Part 4. Prevention of Crimes and Apprehension of Criminals (Refs & Annos)

Title 1. Investigation and Control of Crimes and Criminals (Refs & Annos)

Chapter 2. Control of Crimes and Criminals (Refs & Annos)

Article 2.5. Child Abuse and Neglect Reporting Act (Refs & Annos)

→→ § 11169. Child abuse or neglect reports; transmittal of substantiated reports to Department of Justice; notice to known or suspected child abuser of report to Child Abuse Central Index (CACI); hearing to challenge CACI listing; grounds for denial of hearing; removal of person from CACI; retention of reports; immunity

(a) 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 that is determined to be substantiated, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is substantiated, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report. 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. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) On and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 shall no longer forward to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect.

(c) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI). The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(d) Subject to subdivision (e), any person who is listed on the CACI has the right to a hearing before the agency that requested his or her inclusion in the CACI to challenge his or her listing on the CACI. The hearing shall satisfy due process requirements. It is the intent of the Legislature that the hearing provided for by this subdivision shall not be construed to be inconsistent with hearing proceedings available to persons who have been listed on the CACI prior to the enactment of the act that added this subdivision.

(e) A hearing requested pursuant to subdivision (d) shall be denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court. A person who is listed on the CACI and has been denied a hearing pursuant to this subdivision has a right to a hearing pursuant to subdivision (d) only if the court's jurisdiction has terminated, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and a hearing has not previously been provided to the listed person pursuant to subdivision (d).

(f) Any person listed in the CACI who has reached 100 years of age shall have his or her listing removed from the CACI.

(g) Any person listed in the CACI as of January 1, 2013, who was listed prior to reaching 18 years of age, and who is listed once in CACI with no subsequent listings, shall be removed from the CACI 10 years from the date of the incident resulting in the CACI listing.

(h) If, after a hearing pursuant to subdivision (d) or a court proceeding described in subdivision (e), it is determined the person's CACI listing was based on a report that was not substantiated, the agency shall notify the Department of Justice of that result and the department shall remove that person's name from the CACI.

(i) Agencies, including police departments and sheriff's departments, shall retain child abuse or neglect investigative reports that result or resulted in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the CACI pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(j) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

#### CREDIT(S)

(Added by Stats.1980, c. 1071, § 4. Amended by Stats.1981, c. 435, § 4, eff. Sept. 12, 1981; Stats.1985, c. 1598, § 8; Stats.1988, c. 269, § 4; Stats.1988, c. 1497, § 1; Stats.1997, c. 842 (S.B.644), § 5; Stats.2000, c. 916 (A.B.1241), § 27; Stats.2001, c. 133 (A.B.102), § 14, eff. July 31, 2001; Stats.2004, c. 842 (S.B.1313), § 17; Stats.2011, c. 468 (A.B.717), § 2; Stats.2012, c. 848 (A.B.1707), § 1.)

#### VALIDITY

*A prior version of this section was held unconstitutional as violating due process in the decision of Humphries v. County of Los Angeles, C.A.9 (Cal.)2009, 554 F.3d 1170, as amended, certiorari granted in part 130 S.Ct. 1501, 176 L.Ed.2d 108, reversed and remanded 131 S.Ct. 447, 178 L.Ed.2d 460, on remand 649 F.3d 1077.*

## HISTORICAL AND STATUTORY NOTES

## 2011 Main Volume

The 1981 amendment inserted in the first sentence “known or” preceding “suspected” and added at the end of the first sentence “other than cases coming within the provisions of paragraph (2) of subdivision (c) of Section 11165”.

The 1985 amendment rewrote this section, which read.

“A child protective agency shall forward to the Department of Justice a preliminary report in writing of every case of known or suspected child abuse which it investigates, whether or not any formal action is taken in the case other than cases coming within the provisions of paragraph (2) of subdivision (c) of Section 11165. However, if after investigation the case proves to be unfounded no report shall be retained by the Department of Justice. If a report has previously been filed which has proved unfounded the Department of Justice shall be notified of that fact. The report shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the Department of Justice.”

The 1988 amendment by c. 1497, substituted “subdivision (b) of Section 11165.2” for “the provisions of paragraph (2) of subdivision (c) of Section 11165” and “Section 11165.12” for “subdivision (n) of Section 11165”.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Stats.1997, c. 842, designated the existing text as subs. (a) and (d); inserted subs. (b) and (c), relating to notice to known or suspected abusers and retention of reports; and made a nonsubstantive change.

Section 1 of Stats.1997, c. 842 (S.B.644), provides:

“This act shall be known and may be cited as Lance's Law Child Safety Reform Act of 1997.”

Stats.2000, c. 916 (A.B.1241) rewrote this section, which read:

“(a) A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. 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 and shall not retain the report. The report required by this section shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send that report to the Department of Justice.

“(b) At the time a child protective agency forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

“(c) Child protective agencies shall retain child abuse investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes a child protective agency from retaining the reports for a longer period of time if required by law.

“(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by a child protective agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.”

Section 34 of Stats.2000, c. 916 (A.B.1241), provides:

“This act is not intended to abrogate the case of Alejo v. City of Alhambra (1999) 75 Cal.App.4th 1180.”

Stats.2001, c. 133 (A.B.102), in subd. (a), inserted “severe” in the first sentence.

Stats.2004, c. 842 (S.B.1313), in subd. (c), inserted “and subdivision (a) of Section 11170”.

Commission on State Mandates claim provisions relating to Stats.2004, c. 842 (S.B.1313), see Historical and Statutory Notes under Penal Code § 11165.3.

2013 Electronic Pocket Part Update

2011 Legislation

Stats.2011, c. 468 (A.B.717), rewrote this section, which read:

“(a) 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, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. 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 and shall not retain the report. 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. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

“(b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

“(c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

“(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.”

For cost reimbursement provisions relating to Stats.2011, c. 468 (A.B.717), see Historical and Statutory Notes under Penal Code § 11165.12.

#### 2012 Legislation

Stats.2012, c. 848 (A.B.1707), inserted a new subd. (g); and redesignated former subds. (g) to (i) as new subds. (h) to (j), respectively.

#### CROSS REFERENCES

Child abuse or neglect defined for purposes of this Article, see Penal Code § 11165.6.

#### CODE OF REGULATIONS REFERENCES

Administration of the Child Abuse Central Index,

DOJ notification when a submitting agency provides names identified in existing CACI entries, see 11 Cal. Code of Regs. § 904.

Entities authorized to access CACI information may not make determinations based solely on the CACI listing, see 11 Cal. Code of Regs. § 903.

Form required for submitting report of suspected child abuse or severe neglect, see 11 Cal. Code of Regs. § 900.

Releasing CACI information in response to inquiries from authorized entities, see 11 Cal. Code of Regs. § 905.

Responsibilities of agencies submitting reporting form, see 11 Cal. Code of Regs. § 902.

Reports of child abuse in out-of-home care facilities,

Child welfare agency duties and responsibilities, see 11 Cal. Code of Regs. § 930.52.

Enforcement of guidelines, see 11 Cal. Code of Regs. § 930.70.

Final report, see 11 Cal. Code of Regs. § 930.62.

Follow-up investigation, see 11 Cal. Code of Regs. § 930.61.

Follow-up reporting requirements, see 11 Cal. Code of Regs. § 930.43.

Law enforcement duties and responsibilities, see 11 Cal. Code of Regs. § 930.51.

Notification requirements, see 11 Cal. Code of Regs. § 930.42.

Preliminary investigation, see 11 Cal. Code of Regs. § 930.60.

Unfounded reports, see 11 Cal. Code of Regs. § 930.44.

#### LAW REVIEW AND JOURNAL COMMENTARIES

Chapter 842: Extending provisions of the Child Abuse and Neglect Reporting Act. Andrea E. Pelochino, 36 McGeorge L.Rev. 831 (2005).

A pointer system that points to the nonexistent: Problems with the Child Abuse Central Index (CACI). Alisha M. Santana, 4 Whittier J. Child & Fam. Advoc. 115 (2004).

#### LIBRARY REFERENCES

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Infants  17.

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C.J.S. Adoption of Persons §§ 10 to 14, 41.

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##### ALR Library

36 ALR 6th 475, Constitutional Challenges to State Child Abuse Registries.

73 ALR 4th 782, Validity, Construction, and Application of State Statute Requiring Doctor or Other Person to Report Child Abuse.

##### Encyclopedias

40 Am. Jur. Proof of Facts 3d 237, Governmental Liability for Liberty or Privacy Deprivation Resulting from Erroneous Information in Agency Records.

CA Jur. 3d Constitutional Law § 210, Nature of Liberty Interest.

Cal. Jur. 3d Criminal Law: Core Aspects § 58, Duty of Child Protective Agency.

Cal. Jur. 3d Criminal Law: Core Aspects § 59, Duty of Department of Justice.

##### Treatises and Practice Aids

5 Witkin, California Summary 10th Torts § 140, (S 140) in General.

#### NOTES OF DECISIONS

Confidentiality 3

Due process 2

Erroneous listing 5

Maintenance of child abuse reports 4

Qualified immunity 6

Review 7

Validity 1

##### 1. Validity

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. Humphries v. County of Los Angeles, C.A.9 (Cal.)2009, 554 F.3d 1170, as amended, certiorari granted in part 130 S.Ct. 1501, 176 L.Ed.2d 108, reversed and remanded 131 S.Ct. 447, 178 L.Ed.2d 460, on remand 649 F.3d 1077. Constitutional Law 4403; Infants 1006(9); Infants 1468

## 2. Due process

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. Humphries v. County of Los Angeles, C.A.9 (Cal.)2009, 554 F.3d 1170, as amended, certiorari granted in part 130 S.Ct. 1501, 176 L.Ed.2d 108, reversed and remanded 131 S.Ct. 447, 178 L.Ed.2d 460, on remand 649 F.3d 1077. Constitutional Law 4403; Infants 1468

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. Humphries v. County of Los Angeles, C.A.9 (Cal.)2009, 554 F.3d 1170, as amended, certiorari granted in part 130 S.Ct. 1501, 176 L.Ed.2d 108, reversed and remanded 131 S.Ct. 447, 178 L.Ed.2d 460, on remand 649 F.3d 1077. Constitutional Law 4403; Infants 1006(18); Infants 1468

## 3. Confidentiality

The information in the California department of justice child abuse files, which is to be used in furtherance of investigating suspected child abuse and carrying out the purpose of the Child Abuse Reporting Law (§ 11165 et seq.), namely the protection of children, must be provided to child protective agencies submitting a report, or to a district attorney who has requested notification of a suspected child abuse case, but the department is not obligated to furnish this information to other persons or agencies. 65 Op.Atty.Gen. 335, 6-1-82.

## 4. Maintenance of child abuse reports

Under California's Child Abuse and Neglect Reporting Act (CANRA), child protective agencies are required to forward child abuse reports, except unfounded reports, to the Department of Justice, which then maintains an index of such reports. Miller v. California, C.A.9 (Cal.)2004, 355 F.3d 1172. Infants 1439; Infants 1509; Infants 3174

### 5. Erroneous listing

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. Humphries v. County of Los Angeles, C.A.9 (Cal.)2009, 554 F.3d 1170, as amended, certiorari granted in part 130 S.Ct. 1501, 176 L.Ed.2d 108, reversed and remanded 131 S.Ct. 447, 178 L.Ed.2d 460, on remand 649 F.3d 1077. Constitutional Law 4403; Infants 1471

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. Humphries v. County of Los Angeles, C.A.9 (Cal.)2009, 554 F.3d 1170, as amended, certiorari granted in part 130 S.Ct. 1501, 176 L.Ed.2d 108, reversed and remanded 131 S.Ct. 447, 178 L.Ed.2d 460, on remand 649 F.3d 1077. Constitutional Law 4403; Infants 1006(18); Infants 1468

### 6. Qualified immunity

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. Humphries v. County of Los Angeles, C.A.9 (Cal.)2009, 554 F.3d 1170, as amended, certiorari granted in part 130 S.Ct. 1501, 176 L.Ed.2d 108, reversed and remanded 131 S.Ct. 447, 178 L.Ed.2d 460, on remand 649 F.3d 1077. Civil Rights 1376(6)

### 7. Review

Father's challenge to the listing of his name on the Child Abuse Central Index (CACI), as a result of an inconclusive determination of a child abuse investigation involving his daughter, implicated a fundamental vested right such that an independent judgment standard of review applied to county's determination that child abuse allegations were inconclusive rather than unfounded. Saraswati v. County of San Diego (App. 4 Dist. 2011) 135 Cal.Rptr.3d 671, 202 Cal.App.4th 917. Infants 1473

Trial court's comments during hearing that “if this were an independent judgment test, I would be siding with” father and that “I would be finding in his favor” did not constitute a thorough and considered application of the independent judgment standard and, thus, Court of Appeal, after determining that trial court improperly applied substantial evi-

dence standard of review to father's challenge to county's determination that child abuse allegations made against father were inconclusive rather than unfounded, would remand for review under the correct independent judgment standard, rather than reverse and order that judgment be entered in favor of father. Saraswati v. County of San Diego (App. 4 Dist. 2011) 135 Cal.Rptr.3d 671, 202 Cal.App.4th 917. Infants  1473

West's Ann. Cal. Penal Code § 11169, CA PENAL § 11169

Current with all 2012 Reg.Sess. laws, Gov.Reorg.Plan No. 2 of 2011-2012, and all propositions on 2012 ballots.

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END OF DOCUMENT

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

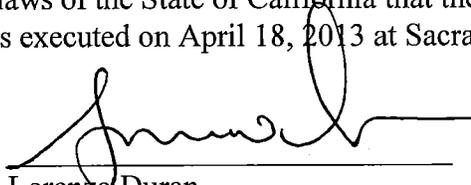
On April 18, 2013, I served the:

**Claimant Comments**

*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*  
Penal Code Sections 11165.9 et al.  
County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 18, 2013 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95814

Original List Date: 7/6/2001  
 Last Updated: 4/10/2013  
 List Print Date: 04/18/2013  
 Claim Number: 00-TC-22  
 Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

**Mailing List**

**TO ALL PARTIES AND INTERESTED PARTIES:**

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Received  
June 7, 2013  
Commission on  
State Mandates

June 7, 2013

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

Dear Ms. Halsey:

The Department of Finance has reviewed the draft staff analysis of the proposed parameters and guidelines for the Interagency Child Abuse and Neglect Investigation Reports (00-TC-22) mandate program submitted by Los Angeles County. Generally, we have no concerns with the reimbursable activities as they appear to be consistent with the statement of decision.

However, in regards to county welfare departments, to the extent that 2011 Realignment funds them for conducting the ICAN activities, under Article XIII, section 36 of the California Constitution, if the Commission outlines reimbursable activities that cause these departments to incur costs that are in excess of what 2011 Realignment funds, the departments are required to conduct the activities only insofar as funding is provided by 2011 Realignment. Activities that result in costs in excess of what 2011 Realignment provides are not reimbursable mandates and the county welfare departments may conduct those additional activities if they have resources to do so.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Randall Ward, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

TOM DYER  
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA SHELTON  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-00-TC-22

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

*June 7, 2013*  
\_\_\_\_\_ at Sacramento, CA

*Carla Shelton*  
\_\_\_\_\_ Carla Shelton

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 7, 2013, I served the:

**Department of Finance Comments**

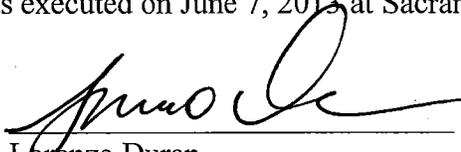
*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*

Penal Code Sections 11165.9 et al.

County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 7, 2013 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95814

# Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 5/16/2013  
List Print Date: 06/07/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

## Mailing List

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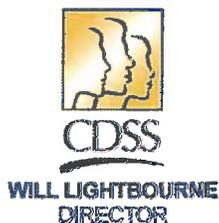
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Mr. Gregory E. Rose Department of Social Services (A-24) Children and Family Services Division 744 P Street, MS 8-17-18 Sacramento, CA 95814	Tel: (916) 657-2614 Email: Greg.Rose@dss.ca.gov Fax: (916) 657-2049



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
 744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



EDMUND G. BROWN JR.  
GOVERNOR

June 7, 2013

Received  
 June 10, 2013  
 Commission on  
 State Mandates

Ms. Heidi Palchik  
 Commission on State Mandates  
 980 9<sup>th</sup> Street, Suite 300  
 Sacramento, CA 95814

Dear Ms. Palchik:

Given the statement of decision, the draft Parameters and Guidelines for the Interagency Child Abuse and Neglect Investigation Reports, OO-TC-22, test claim appear appropriate and reasonable, and the California Department of Social Services (CDSS) supports them. Presuming that the Commission agrees with that Parameters and Guidelines as drafted, we look forward to participating in the development of the statewide cost estimate.

We would note that until the 2011 realignment of child welfare services, on the child welfare side counties have received significant state funding for the activities of social workers, for whom many of the activities identified in this mandate is a core function of their work. We also would expect the Commission to consider the implications of the realignment agreements' statutory and constitutional changes in any reimbursable cost estimates beyond 2011. Additionally, the Commission should consider the revenues received by counties as a result of 1991-92 Realignment of Child Welfare Services Programs (A.B. 948 Chapter 91 (1991)) as a potential offset to county costs for mandated activities as determined by the Commission under the Child Abuse and Neglect Reporting Act.

The CDSS at this time does not expect to attend the hearing, which we understand is being rescheduled. If we can be of any assistance on this matter, please contact me at (916) 657-2598 or [pete.cervinka@dss.ca.gov](mailto:pete.cervinka@dss.ca.gov).

Sincerely,

PETE CERVINKA  
 Program Deputy Director  
 For Benefits and Services

c: Heather Halsey, Executive Director

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 10, 2013, I served the:

**Department of Social Services Comments**

*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*

Penal Code Sections 11165. 9 et al.

County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 10, 2013 at Sacramento, California.

  
\_\_\_\_\_  
Jason Hone  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95814

## Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 5/16/2013  
List Print Date: 06/10/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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**COMMISSION ON STATE MANDATES**

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June 14, 2013

Mr. Leonard Kaye  
 County of Los Angeles,  
 Auditor-Controller's Office  
 500 West Temple Street, Room 603  
 Los Angeles, CA 90012-2766

*And Affected State Agencies and Interested Parties (See Mailing List)*

**RE: Commission Request for Comments on New Substantive Issue, Schedule for Comments and Notice of Postponement and Rescheduling of Hearing**  
*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*  
 Penal Code Sections 11165. 9 et al.  
 County of Los Angeles, Claimant

Dear Mr. Kaye:

Commission staff issued a draft proposed statement of decision and parameters and guidelines for *Interagency Child Abuse and Neglect Investigation Reports (ICAN) 00-TC-22*, on March 12, 2013. On June 7, 2013, DOF submitted comments raising a new substantive issue regarding "capping," or ending, reimbursement for county welfare departments for the ICAN program, pursuant to Proposition 30 and the 2011 Realignment. DOF suggests that Proposition 30 might end reimbursement for county welfare departments for activities approved by the Commission under the ICAN test claim statutes:

[I]n regards to county welfare departments, to the extent that 2011 Realignment funds them for conducting the ICAN activities, under Article XIII, section 36 of the California Constitution, if the Commission outlines reimbursable activities that cause these departments to incur costs that are in excess of what 2011 Realignment funds, the departments are required to conduct the activities only insofar as funding is provided by 2011 Realignment. Activities that result in costs in excess of what 2011 Realignment provides are not reimbursable mandates and the county welfare departments may conduct those additional activities if they have resources to do so.<sup>1</sup>

### **Background and Statement of Issue**

This is an issue of first impression for the Commission, and one that will likely arise again, given the broad scope of the 2011 Realignment and Proposition 30 (2012). The relevant legal issue is as follows:

<sup>1</sup> DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

Mr. Kaye  
June 14, 2013

Between March and October of 2011, a series of budget trailer bills were enacted, which the LAO would later refer to as the 2011 Realignment.<sup>2</sup> One of those budget trailer bills, AB 118, provided for the creation of a number of new accounts and subaccounts, including the Child Abuse Prevention Subaccount, the purpose of which was “to fund the costs of child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation.”<sup>3</sup> The 2011 Realignment included over \$6 billion to local government for “public safety services,” as defined, and over \$1.5 billion to foster care and child welfare services, which was not delineated more specifically.<sup>4</sup>

After the 2011 Realignment Legislation was enacted, the LAO issued a report identifying several “pressing implementation issues,” including a risk that the programs shifted to the local level could trigger new mandate reimbursement requirements.<sup>5</sup> The following year, the voters approved Proposition 30, on November 6, 2012. In addition to providing new revenue for a period of years, Proposition 30 added article XIII, section 36 to the California Constitution:

(3) Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, *a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section.*

(4)(A) Legislation enacted after September 30, 2012, that has an overall effect of increasing the costs *already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation shall apply to local agencies only to the extent that the State provides annual funding for the cost increase.* Local agencies shall not be obligated to provide programs or levels of service required by legislation, described in this subparagraph, above the level for which funding has been provided.

(B) Regulations, executive orders, or administrative directives, implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have an overall effect of increasing the costs *already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, shall apply to local agencies only to the extent that the State provides annual funding for the cost increase.* Local agencies shall not be obligated to provide programs or levels of service pursuant to new regulations, executive orders, or administrative directives, described in this subparagraph, above the level for which funding has been provided.<sup>6</sup>

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<sup>2</sup> LAO Analysis of 2011 Realignment, available at [http://www.lao.ca.gov/reports/2011/stadm/realignment/realignment\\_081911.pdf](http://www.lao.ca.gov/reports/2011/stadm/realignment/realignment_081911.pdf).

<sup>3</sup> Government Code section 30025(f)(7)(E) (Stats. 2011, ch. 40 (AB 118)).

<sup>4</sup> LAO Analysis of 2011 Realignment, at p. 7.

<sup>5</sup> LAO Analysis of 2011 Realignment, at pp. 11; 19.

<sup>6</sup> California Constitution, article XIII, section 36(c) (adopted November 6, 2012) [emphasis added].

Mr. Kaye  
June 14, 2013

Whether Proposition 30 ends or offsets mandate reimbursement for an existing program that may fall within the broad definition of “public safety services” is an issue of first impression for the Commission.

### Written Comments

The Commission seeks input from parties and interested parties and persons with respect to mandates that may be affected by Proposition 30, in conjunction with the funding provided by the 2011 Realignment. Specifically, the Commission requests comments, with thorough analysis and appropriate legal citation, on the following questions:

1. Are the approved activities under the ICAN statutes (Penal Code sections 11165.9, 11166, 11166.2, 11166.9,<sup>7</sup> 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9)) part of “child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation,” for purposes of the funding directed to the Child Abuse Prevention Subaccount? And, if so, do such funds constitute a potential or required offset?
2. Does the shift of complete or partial funding responsibility from the state to local governments of existing approved mandated activities result in a mandate “imposed by the 2011 Realignment Legislation” within the meaning of paragraph (3)?
3. Does article XIII, section 36 require, as suggested by DOF, that an existing mandated program funded under the 2011 Realignment is mandated only to the extent of funding, or does that limitation apply only to future new programs or increases in levels of service related to a funded program?

### Schedule for Comments

We invite all parties, interested parties, and interested persons to submit comments on these questions by **Friday July 12, 2013**.

### Notice of Postponement and Rescheduling of Hearing

Pursuant to section 1183.01(c)(3), of the Commission’s regulations, the July 26, 2013 hearing of this matter is postponed. This matter is now set for hearing on **September 27, 2013**, at 10:00 a.m. in the State Capitol, Sacramento, California. The final staff analysis will be issued on or about September 13, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2), of the Commission’s regulations.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,



Heather Halsey  
Executive Director

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<sup>7</sup> Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

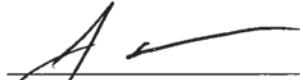
I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 14, 2013, I served the:

**Commission Request for Comments on New Substantive Issue, Schedule for  
Comments and Notice of Postponement and Rescheduling of Hearing**  
*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*  
Penal Code Sections 11165. 9 et al.  
County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 14, 2013 at Sacramento, California.

  
\_\_\_\_\_  
Jason Hone  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95814

## Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 6/14/2013  
List Print Date: 06/14/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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# Commission on State Mandates

Original List Date: 6/14/2013  
Last Updated: 6/14/2013  
List Print Date: 6/14/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation

## Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

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Received  
July 8, 2013  
Commission on  
State Mandates

July 8, 2013

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

**RE: Commission Request for Comments on New Substantive Issue, Schedule for Comments and Notice of Postponement and Rescheduling of Hearing (Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22)**

Dear Ms. Halsey:

The Department of Finance (Finance) requests an extension to filing comments pursuant to the Commission on State Mandates' (Commission) June 14, 2013 letter on "Interagency Child Abuse and Neglect Investigation Reports, (00-TC-22)." Consistent with the time necessary for Commission staff to receive and review comments from interested parties, we additionally request postponement of the scheduled September 27, 2013 hearing on the Commission staff's analysis of the parameters and guidelines to the December 6, 2013 Commission hearing. Finance requests this extension because the questions posed by the Commission will require Finance and other affected state agencies to spend substantial time to deliberate prior to providing a meaningful response.

In particular, the history of state and local funding for the activities listed in question 1 is complex and covers over two decades. Given the complexity of this issue and the recent enactment on June 27 of the 2013 Budget Act, which required the focus of our staff's efforts, Finance needs additional time to analyze the funding background of these activities so that the Commission has the benefit of a thorough and accurate response.

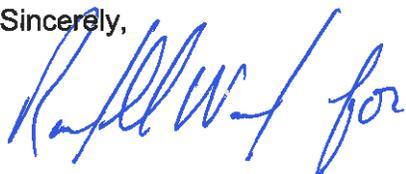
Second, as the Commission notes, the issues relating to 2011 Realignment and Proposition 30 are of first impression that potentially has a broad impact on future mandates issues. Consequently, Finance requires additional time to review the interrelationship between the potential of realigned funding of this mandate and the overarching legal issues of the recent passage of Proposition 30.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

Ms. Heather Halsey  
July 8, 2013  
Page 2

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst, at (916) 445-3274.

Sincerely,



TOM DYER  
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF RANDALL WARD  
DEPARTMENT OF FINANCE  
CLAIM NO. 00-TC-22

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

7-8-13

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at Sacramento, CA



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Randall Ward

## COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
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July 9, 2013

Mr. Tom Dyer  
Department of Finance  
915 L Street  
Sacramento, CA 95814

Mr. Leonard Kaye  
County of Los Angeles,  
Auditor-Controller's Office  
500 West Temple Street, Room 603  
Los Angeles, CA 90012-2766

*And Affected State Agencies and Interested Parties (See Mailing List)*

**RE: Notice of Approval of Extension and Postponement of Hearing Request**  
*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*  
Penal Code Sections 11165.9 et al.  
County of Los Angeles, Claimant

Dear Mr. Dyer and Mr. Kaye:

On July 8, 2013, the Commission on State Mandates (Commission) received a request from the Department of Finance for an extension of time to file comments and postponement of hearing on the above-named matter to the December 6, 2013 Commission meeting. The request was made in response to the *Commission Request for Comments on New Substantive Issue* dated June 14, 2013, to allow additional time for comment because of the importance and complexity of the constitutional issues raised.

The request for extension of time to file comments and postponement of hearing on the above-named matter is approved for good cause, pursuant to section 1183.01(c)(1)(B) and (2)(A) of the Commission's regulations.

Therefore, comments from all parties are now due on or before **September 5, 2013**. This matter is now set for hearing on **December 6, 2013**, at 10:00 a.m. in Room 447 of the State Capitol, Sacramento, California.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

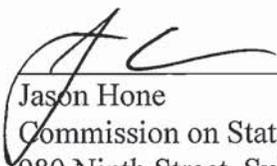
I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 9, 2013, I served the:

**Finance Request for Extension of Time and Postponement of Hearing; and  
Notice of Approval of Extension Request and Postponement of Hearing**  
*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*  
Penal Code Sections 11165.9 et al.  
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 9, 2013 at Sacramento, California.

  
\_\_\_\_\_  
Jason Hone  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 7/8/2013  
List Print Date: 07/08/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

---

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# Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 7/8/2013  
List Print Date: 7/8/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation

## Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

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## California State Association of Counties



September 3, 2013

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**Re: Request for Comment, *Interagency Child Abuse and Neglect Investigation Reports* Case No.: 00-TC-22**

Dear Ms. Halsey:

The California State Association of Counties (CSAC) submits these comments in response to the Commission's June 14, 2013 request. The Commission sought comments following a Department of Finance comment letter suggesting that 2011 Realignment and the addition of section 36 to article XIII of the California Constitution made by Proposition 30 may have an impact on the obligation of the State to reimburse counties for the costs of performing the mandates related to the Interagency Child Abuse and Neglect Investigation Reports (ICAN). Specifically, the Commission posed the following questions:

1. **Are the approved activities under the ICAN statutes (Penal Code sections 11165.9, 1116, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9)) part of the "child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation," for purposes of the funding directed to the Child Abuse Prevention Subaccount? And, if so, do such funds constitute a potential or required offset?**

The ICAN activities, as identified by the Commission in its December 6, 2007 Statement of Decision, are not among the "public safety services" that are covered by section 36 of article XIII of the California Constitution (Prop. 30). Prop. 30 defines "public safety services" to include those "[p]reventing child abuse, neglect, or exploitation; providing services to children and youth who are abused, neglected, or exploited, or who are at risk of abuse, neglect, or exploitation, and the families of those children; providing adoption services; and providing adult protective services." (Cal. Const, art. XIII, § 36, subd. (a), par. (1)(C).) Section 36 also states that "2011 Realignment Legislation" is any legislation enacted on or before September 30, 2012 that is entitled 2011 Realignment and assigns Public Safety Services responsibilities to local agencies. (Cal. Const., art. XIII, § 36, subd. (a), par. (2).)

The Department of Finance correctly notes that under Prop. 30, a mandate of a new program or higher level of service imposed on a local agency by 2011 Realignment Legislation is not a mandate requiring the State to provide a subvention of funds. (Cal. Const., art. XIII, § 36, subd. (c), par. (3).) Under that provision, however, "public safety services" are only exempt from reimbursement if they were assigned to local agencies by 2011 Realignment Legislation. There is nothing in Prop. 30 that broadly exempts from reimbursement any program that could potentially fit within the definition of "public safety services."

The ICAN mandates were not among those transferred to local agencies by 2011 Realignment Legislation. The statutory provisions comprising the ICAN mandates were all adopted prior to Prop. 30, and there is no legislation entitled “2011 Realignment Legislation” adopted prior to September 30, 2012 that realigns or even mentions any of the statutory provisions constituting the ICAN mandates. As such, Prop. 30 has no impact on the ICAN Parameters and Guidelines currently pending before this Commission.

This conclusion is bolstered by how the funding levels for 2011 Realignment were determined. For the health and welfare programs defined in paragraph (1)(C) – (E) of subdivision (a) of section 36 of article XIII, 2011 Realignment involved a shift in funding ratios. (See Stats 2012 ch 35 (SB 1013).) For these programs, the State had been funding a specified percentage of the programs prior to 2011 Realignment, but legislation entitled “2011 Realignment Legislation” was adopted to change the funding ratios between the state and counties for those programs. As a practical matter, the cost of this funding shift was factored into the amount of the funding deposited into the Local Revenue Fund 2011.

However, as this Commission determined in its Statement of Decision, “there is no evidence in the record to demonstrate that the mandated [ICAN] activities have been offset or funded by the state or federal government in a manner and amount ‘sufficient’ to fund the cost of the state mandate.” Further, the Statement of Decision notes that none of the augmentation funding identified by DOF for the ICAN mandates included costs incurred by local law enforcement. Thus, the ICAN mandates were not being funded by the State prior to 2011 Realignment, and therefore were not included in the base funding for child welfare programs or the new law enforcement responsibilities in 2011 realignment funding.

Because the ICAN mandates were not realigned by 2011 Realignment Legislation and were not factored into the base funding for 2011 Realignment, Prop. 30 is not applicable to the issue pending before this Commission.

2. **Does the shift of complete or partial funding responsibility from state to local governments of existing approved mandated activities result in a mandate “imposed by the 2011 Realignment Legislation” within the meaning of paragraph (3)?**

Because the ICAN mandates were not realigned by 2011 Realignment Legislation, this issue is not currently before this Commission. The answer to this question necessarily involves certain factual determinations. As such, CSAC urges the Commission not to reach this issue until such time as the question is directly posed by a mandate pending before the Commission.

3. **Does article XIII, section 36 require, as suggested by DOF, that an existing mandated program funded under the 2011 Realignment is mandated only to the extent of funding, or does that limitation apply only to future new programs or increases in levels of service related to a funded program?**

Prop. 30 provides that any legislation enacted after September 30, 2012, or any regulations, executive orders, or administrative directives implemented after October 9, 2011, that have an

overall effect of increasing costs already borne by a local agency for programs or levels of service mandated by 2011 Realignment Legislation need only be implemented to the extent funding is provided. (Cal. Const., art. XIII, § 36, subd. (c), par. (4)(A)-(C).) Thus, by its terms, Prop. 30 only applies to future new mandates or increases in levels of service related to programs realigned by 2011 Realignment Legislation, and not to mandates that existed prior to 2011 Realignment. Any mandate in existence at the time of 2011 Realignment that was realigned by 2011 Realignment Legislation must be implemented in full, whether or not fully funded, and is not subject to mandate claims. (Cal. Const., art. XIII, § 36, subd. (c), par. (3).)

This question, however, is not relevant to the issue pending before the Commission since the ICAN mandates were not realigned to local agencies by 2011 Realignment Legislation. This Commission should not opine on this issue until such time as the question is directly posed by a mandate pending before the Commission.

CSAC appreciates this opportunity to submit comments on these important issues. Should you have any questions, please do not hesitate to contact Geoffrey Neil at (916) 327-7500, ext 567 or [gneill@counties.org](mailto:gneill@counties.org).

Sincerely,



Jean Kinney Hurst  
Senior Legislative Representative

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

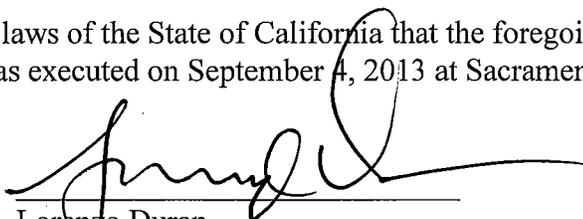
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 4, 2013, I served the:

**California State Association of Counties Comments**  
*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*  
Penal Code Sections 11165. 9 et al.  
County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 4, 2013 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
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## Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 9/4/2013  
List Print Date: 09/04/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

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

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September 5, 2013  
COMMISSION ON  
STATE MANDATES

Exhibit Q

WENDY L. WATANABE  
AUDITOR-CONTROLLER

September 5, 2013

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

Dear Ms. Halsey:

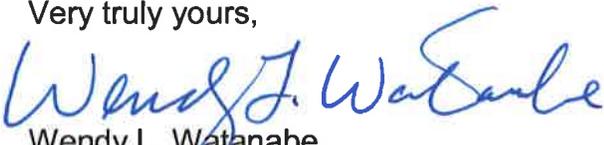
**LOS ANGELES COUNTY'S RESPONSE TO THE COMMISSION  
ON STATE MANDATES' REQUEST FOR COMMENTS ON A NEW  
SUBSTANTIVE ISSUE FOR INTERAGENCY CHILD ABUSE  
AND NEGLECT INVESTIGATION REPORTS**

We are submitting our response to the Commission on State Mandates' request for comments on a new substantive issue for the Interagency Child Abuse and Neglect Program.

We are e-filing our comments pursuant to Section 1181.2, subd. (c)(1)(E) of the California Code of Regulations, "Documents e-filed with the Commission need not be otherwise served on the persons that have provided an e-mail address for the mailing list."

If you have any questions, please contact Ed Jewik at (213) 974-8564 or [ejewik@auditor.lacounty.gov](mailto:ejewik@auditor.lacounty.gov).

Very truly yours,

  
Wendy L. Watanabe  
Auditor-Controller

WLW:JN:CY:ED:hy  
H:\SB90\CSM's Extensions\ICAN Response 8-22-13.doc

Attachment

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**LOS ANGELES COUNTY'S RESPONSE TO THE COMMISSION  
ON STATE MANDATES' (CSM) REQUEST FOR COMMENTS ON A NEW  
SUBSTANTIVE ISSUE FOR INTERAGENCY CHILD ABUSE  
AND NEGLECT INVESTIGATION REPORTS (ICAN)**

On June 14, 2013, CSM staff requested comments seeking input from parties and interested persons with respect to mandates that may be affected by Proposition 30, in conjunction with the funding provided by the 2011 Realignment Legislation. Specifically, the CSM staff requested thorough analysis and appropriate legal citation, on the following questions:

- 1. Are the approved activities under the ICAN statutes (Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) part of the "child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation," for purposes of the funding directed to the Child Abuse Prevention Subaccount? And, if so, do such funds constitute a potential or required offset?**

No. The "child abuse prevention, intervention, and treatment services" referenced in Government Code section 30025(f)(16)(A)(vi) are limited to those services assigned to local agencies pursuant to the 2011 Realignment Legislation. The 2011 Realignment Legislation is defined by Article XIII, Section 36, paragraph (a), subparagraph (2) of the California Constitution to mean "legislation enacted on or before September 30, 2012, to implement the state budget plan, that is entitled 2011 Realignment and provides for the assignment of Public Safety Services responsibilities to local agencies, including related reporting responsibilities." Thus, in order for legislation to meet the definition of 2011 Realignment Legislation, it must meet four criteria. It must:

1. Be enacted before September 30, 2012;
2. Be enacted to implement the state budget plan;
3. Be entitled 2011 Realignment; and
4. Provide for the assignment of Public Safety Services responsibilities to local agencies.

The phrase "Public Safety Services" is defined by Article XIII, Section 36, paragraph (a), subsection (1), subparagraph (C), of the California Constitution as "[p]reventing child abuse, neglect, or exploitation; providing services to children and youth who are abused, neglected, or exploited, or who are at risk of abuse, neglect, or exploitation, and the families of those children; providing adoption services; and providing adult protective services."

There are nine pieces of legislation that meet these four criteria: AB 109, AB 94, AB 111, AB 1712, SB 1009, SB 1013, SB 1014, SB 1020, and SB 1023.<sup>1</sup> None of these bills assigned the approved activities under the ICAN statutes to local agencies for two reasons. First, those activities were already assigned to local agencies prior to enactment of the 2011 Realignment Legislation. Second, the 2011 Realignment Legislation specifically details, by statutory reference, which Public Safety Services responsibilities are assigned to local agencies as a result of that legislation. With one inapplicable exception, none of the bills qualifying as 2011 Realignment Legislation make any reference to the ICAN statutes. The lone exception is AB 1712, which makes a non-substantive amendment to Penal Code section 11170.<sup>2</sup> The amendments to Section 11170 do not assign any Public Safety Services responsibilities to local agencies.

Because the ICAN statutes at issue have not been assigned to local agencies pursuant to the 2011 Realignment Legislation, but instead were preexisting mandates, they are not part of the "child abuse prevention, intervention, and treatment services" referenced in Government Code section 30025(f)(16)(A)(vi).

**2. Does the shift of complete or partial funding responsibility from state to local governments of existing approved mandated activities result in a mandate "imposed by the 2011 Realignment Legislation" within the meaning of paragraph (3)?**

Because the answer to the first question is no, the County urges the Commission not to address the second question, as it is not relevant to the ICAN test claim.

**3. Does article XIII, section 36 require, as suggested by DOF, that an existing mandated program funded under the 2011 Realignment is mandated only to the extent of funding, or does that limitation apply only to future new programs or increases in levels of service related to a funded program?**

As indicated by the answer to the first question, the ICAN statutes are not funded by the 2011 Realignment Legislation. Therefore, the County urges the Commission not to address the third question, as it is not relevant to the ICAN test claim.

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<sup>1</sup> Two other pieces of legislation, AB 118 and AB 717, meet the first three criteria, but do not provide for the assignment of Public Safety Services responsibilities to local agencies.

<sup>2</sup> The 2012 amendments to Penal Code section 11170 did not assign responsibilities to local agencies. It merely did the following: (1) added the second sentence of subd (a)(3), which required the State Department of Justice to delete certain information from its Child Abuse Central Index database after 10 years; (2) amended subd (b)(4) by (a) substituting the comma for "or" after "of a tribe"; (b) adding ", or tribal organization"; and (c) deleting "or to any county child welfare services agency for the performance of its duties in approving THP-Plus Foster Care providers pursuant to Section 11403.25 of the Welfare and Institutions Code," before "information regarding"; (3) added "or" before "Article 2" in the first sentence of subd (b)(7); and (4) substituted "subsection (a)" for "subdivision (a)" in the second sentence of subd (e)(1).

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 6, 2013, I served the:

**DOF Comments**

**County of Los Angeles Comments**

*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*

Penal Code Sections 11165. 9 et al.

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 6, 2013 at Sacramento, California.



\_\_\_\_\_  
Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 9/4/2013  
List Print Date: 09/06/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

---

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September 5, 2013

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

**RE: Commission Request for Comments on New Substantive Issue (Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22)**

Dear Ms. Halsey:

The Commission on State Mandates, in its letter to Mr. Leonard Kaye dated June 14, 2013, requested comments on the following questions. After deliberating the questions, as well as the ICAN activities, below are Finance's responses.

1. **Are the approved activities under the ICAN statutes part of "child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation," for purposes of the funding directed to the Child Abuse Prevention subaccount?**

The short answer to this question is no. Child welfare statutes provide broad policy and funding direction by grouping various programs into categories. Some, but not all, of these categories are further broken down into sub-components which provide a general description of what each one does. However, there is no statute that identifies and/or describes specific funding for ICAN activities.

2. **Does the shift of complete or partial funding responsibility from the state to local government of existing approved mandated activities result in a mandate "imposed by the 2011 Realignment Legislation" within the meaning of paragraph (3)?**

In regards to the approved activities under the ICAN statutes, Finance does not believe that the 2011 Realignment Legislation shifted complete or partial funding responsibility from the state to local government.

3. **Does Article XIII, section 36 require, as suggested by DOF, that an existing mandated program funded under the 2011 Realignment is mandated only to the extent of funding, or does that limitation apply only to future new programs or increases in levels of service related to a funded program?**

Programs or levels of service mandated by the 2011 Realignment Legislation are not mandates for purposes of Article XIII B, Section 6 of the California Constitution. Legislation enacted after September 30<sup>th</sup>, 2012 that has the overall effect of increasing costs already incurred by a local agency for programs or levels of service mandated by 2011 Realignment Legislation apply to local agencies only to the extent the State provides annual funding for the cost increase.

After completing our additional review of the ICAN activities, Finance reiterates its conclusion that the approved activities under the ICAN statutes are reimbursable under the law.

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst, at (916) 445-3274.

Sincerely,



*FD*  
**TOM DYER**  
Assistant Program Budget Manager

Enclosure

**Ms. Heather Halsey**  
**September 5, 2013**  
**Page 3**

Enclosure A

DECLARATION OF MICHAEL BYRNE  
DEPARTMENT OF FINANCE  
CLAIM NO. 00-TC-22

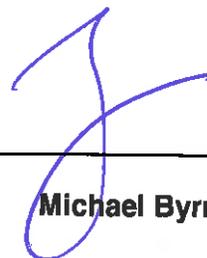
1. I am currently employed by the State of California, Department of Finance (Finance), I am familiar with the duties of Finance, and I am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

9/5/2013

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at Sacramento, CA



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Michael Byrne

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 6, 2013, I served the:

**DOF Comments**

**County of Los Angeles Comments**

*Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22*

Penal Code Sections 11165. 9 et al.

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 6, 2013 at Sacramento, California.



\_\_\_\_\_  
Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 9/4/2013  
List Print Date: 09/06/2013  
Claim Number: 00-TC-22  
Issue: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary  
Senator Christine Kehoe, Chair

AB 717 (Ammiano)

Hearing Date: 08/25/2011 Amended: 06/29/2011  
Consultant: Jolie Onodera Policy Vote: Public Safety 6-0

BILL SUMMARY: AB 717 would make several changes to the laws concerning the Child Abuse Central Index (CACI) maintained by the Department of Justice (DOJ). Specifically, this bill:

- 1) Provides that reports to be forwarded to the DOJ for reporting in the CACI to include only those determined to be "substantiated," rather than those "determined not to be unfounded," as specified;
- 2) Provides that after January 1, 2012, a police department or sheriff's department shall no longer forward written reports to DOJ of investigations of known or suspected child abuse or severe neglect;
- 3) Allows any person listed on the CACI a right to a hearing before the agency that requested his or her inclusion in the CACI to challenge his or her listing, as specified;
- 4) Requires a reporting agency to notify the DOJ when a hearing results in a finding that a CACI listing was based on a report that was not substantiated, and requires the DOJ to remove the person's name from the CACI when so notified;
- 5) Provides that only substantiated reports be filed in the CACI, and all other determinations shall be removed from the CACI;
- 6) Requires any person listed on the CACI who has reached 100 years of age to have his or her listing removed.

Fiscal Impact (in thousands)

Major Provisions	2011-12	2012-13	2013-14	Fund
CACI hearings state-General and notifications hearings	Unknown; potentially significant reimbursable costs for additional hearings			
Removal of requirement to report to DOJ	Significant state-reimbursable cost-General savings to local reporting agencies			

AB 717 (Ammiano)  
Page 1

CACI updates	Minor, absorbable costs to the DOJGeneral			
Litigation impact ongoingGeneral/Local millions	Unknown; likely significant future cost-savings, potentially in the millions of dollars, to state and local agencies			

STAFF COMMENTS: SUSPENSE FILE. AS PROPOSED TO BE AMENDED.

Existing law requires the DOJ to maintain an index (CACI) of all reports of child abuse and severe neglect submitted by specified local reporting agencies that are determined not to be unfounded. The CACI has been maintained by the DOJ since the 1960's and as of April 2011 included over 777,000 reports and 850,000 suspects. The CACI does not necessarily reflect individuals convicted of any crime, but includes information on persons against whom reports of child abuse or neglect have been made, investigated, and determined by the reporting local agency (child welfare department or law enforcement) to meet the requirements for inclusion on the CACI. The CACI is largely utilized by county child welfare department staff who consult the index when conducting background checks and child abuse investigations.

The CACI has been the subject of substantial litigation over the years, principally involving issues related to due process of law, and has resulted in significant costs to the State in attorney fees and staff counsel resources. This bill makes several changes to current law concerning CACI to address the issues raised in previous lawsuits.

This bill provides that reports to be forwarded to the DOJ for reporting in the CACI to include only those determined to be substantiated, rather than those determined not to be unfounded (which includes substantiated and inconclusive reports), as required under current law. Further, on and after January 1, 2012, police departments and sheriff's departments will no longer be required to forward reports to DOJ of any case it investigates.

AB 717 (Ammiano)  
Page 2

A Statement of Decision was issued by the Commission on State Mandates (COSM) on December 6, 2007, concluding various statutes concerning CACI reporting mandated new programs or constituted a higher level of service on local agencies. The COSM has indicated the claimants will not be able to file for reimbursement until the COSM adopts parameters and guidelines in December 2011. As a result, the level of reimbursable costs will not be known until the summer of 2012. By deleting the requirement to report inconclusive reports, as well as limiting CACI reporting agencies to child welfare and probation departments, the provisions of this bill will result in future state-reimbursable cost savings due to reduced mandated reporting workload on local reporting agencies.

This bill would also provide that any person listed on the CACI has the right to a hearing before the agency that requested his or her inclusion in the CACI to challenge his or her listing, and that the hearing shall satisfy due process requirements. If a hearing results in a finding that a CACI listing was based on a report that was not substantiated, the local agency is required to notify the DOJ to remove the person's name from the index. These provisions may result in state-reimbursable costs of an unknown, but potentially significant amount.

In the case of *Gomez, et al v. Saenz* (2003), the suit alleged that being listed on the CACI violated due process of law, the constitutional right to privacy, and interfered with the liberty interests of family members. The Department of Social Services (DSS) settled the case by implementing a process for county social service agencies to provide notification to anyone who will be listed on the CACI and offer a grievance hearing if so requested by any person desiring to challenge his or her listing on the CACI, both prospectively and retroactively. The DSS budget includes \$1.85 million (\$1.3 million General Fund, \$0.55 million county funds) for county activities related to this process for 2011-12. Given the provisions of this bill could result in an individual's listing being removed from CACI if the report is found not to be substantiated, additional grievance hearings may be requested, resulting in additional costs in excess of the amount currently budgeted. A five percent increase in requested hearings would result in additional costs of \$92,500, potentially all state General Fund if found to be state-reimbursable.

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Page 3

Further, the Gomez settlement did not extend the hearing and notification process to law enforcement agencies, which constitute over 40 percent of reports entered into CACI. As a result, additional hearings resulting from the provisions of this bill as requested by individuals placed on the CACI by law enforcement agencies would result in potentially significant state-reimbursable costs.

In addition to removing names pursuant to cases found to be unsubstantiated through the hearing and notification process noted above, this bill requires the DOJ to remove names for all unsubstantiated cases and any person listed on the CACI who has reached 100 years of age. It is estimated approximately 145,000 CACI listings will be removed as a result of these two additional provisions. The DOJ indicates the costs to update CACI will be minor and absorbable.

The provisions of this bill seeking to ensure that CACI is operated in a constitutional manner are likely to result in significant future litigation-related cost savings potentially in the millions of dollars to the DOJ and local agencies.

The author's proposed amendments would add double-jointing language to avoid chaptering out issues with AB 212 (Beall) 2011.



## CHILD ABUSE OR SEVERE NEGLECT INDEXING FORM

**To be completed by Submitting Child Protective Agency pursuant to Penal Code section 11169**

**INITIAL REPORT**

**AMENDED REPORT (attach copy of original BCIA 8583. Complete sections A, C, and all other applicable fields)**

<b>A. SUBMITTING AGENCY</b>	SUBMITTING AGENCY (Enter complete name and check type)				<input type="checkbox"/> POLICE	<input type="checkbox"/> WELFARE	AGENCY REPORT NUMBER/CASE NAME					
	AGENCY ADDRESS Street				<input type="checkbox"/> SHERIFF	<input type="checkbox"/> PROBATION	City		State	Zip Code		
	NAME OF SUBMITTING PARTY				TITLE			AGENCY TELEPHONE				
<b>B. INCIDENT INFORMATION</b>	DATE OF REPORT	The finding that allegations of child abuse or severe neglect are not unfounded is: (Check only one box)										
					<input type="checkbox"/> SUBSTANTIATED (Penal Code section 11165.12(b))			<input type="checkbox"/> INCONCLUSIVE (Penal Code section 11165.102(c))				
<b>C. AMENDED REPORT INFORMATION</b>	DATE OF INCIDENT	TYPE OF ABUSE (Check one or more)										
			<input type="checkbox"/> PHYSICAL INJURY		<input type="checkbox"/> MENTAL/EMOTIONAL SUFFERING		<input type="checkbox"/> SEXUAL ABUSE, ASSAULT, EXPLOITATION					
<b>D. INVOLVED PARTIES</b>	Original Agency Report Number/Case Name: _____				Date of Incident: _____		Type of Abuse: _____					
	<input type="checkbox"/> CHANGED TO INCONCLUSIVE				<input type="checkbox"/> ADDED ADDITIONAL INFORMATION				<input type="checkbox"/> CORRECTED REPORT INFORMATION			
<b>VICTIM(S)</b>	<input type="checkbox"/> CHANGED TO SUBSTANTIATED				<input type="checkbox"/> UNDERLYING INVESTIGATIVE FILE NO LONGER AVAILABLE							
	Comment:											
<b>SUSPECT(S)</b>	NAME: Last First Middle				AKA		DOB		Approx. AGE	<input type="checkbox"/> MALE	RACE *	
									<input type="checkbox"/> FEMALE			
	DID VICTIM'S INJURIES RESULT IN DEATH?				IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) W&I)?							
	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN				<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN							
	NAME: Last First Middle				AKA		DOB		Approx. AGE	<input type="checkbox"/> MALE	RACE *	
									<input type="checkbox"/> FEMALE			
	DID VICTIM'S INJURIES RESULT IN DEATH?				IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) W&I)?							
	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN				<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN							
	NAME: Last First Middle				AKA		DOB		Approx. AGE	<input type="checkbox"/> MALE	RACE *	
									<input type="checkbox"/> FEMALE			
	DID VICTIM'S INJURIES RESULT IN DEATH?				IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) W&I)?							
	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN				<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN							
<b>OTHER</b>	NAME: Last First Middle				AKA		DOB		Approx. AGE	<input type="checkbox"/> MALE	RACE *	
									<input type="checkbox"/> FEMALE			
	ADDRESS Street City				State	Zip Code	HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER	DRIVER'S LICENSE NUMBER
	RELATIONSHIP TO VICTIM: <input type="checkbox"/> PARENT/STEPPARENT <input type="checkbox"/> SIBLING <input type="checkbox"/> OTHER RELATIVE <input type="checkbox"/> FRIEND/ACQUAINTANCE <input type="checkbox"/> STRANGER											
<b>FOR DOJ USE ONLY</b>	NAME: Last First Middle				AKA		DOB		Approx. AGE	<input type="checkbox"/> MALE	RACE *	
									<input type="checkbox"/> FEMALE			
	ADDRESS Street City				State	Zip Code	HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER	DRIVER'S LICENSE NUMBER
	RELATIONSHIP TO VICTIM: <input type="checkbox"/> PARENT/STEPPARENT <input type="checkbox"/> SIBLING <input type="checkbox"/> OTHER RELATIVE <input type="checkbox"/> FRIEND/ACQUAINTANCE <input type="checkbox"/> STRANGER											
NAME: Last First Middle				AKA		DOB		Approx. AGE	<input type="checkbox"/> MALE	RACE *		
								<input type="checkbox"/> FEMALE				
NAME: Last First Middle				AKA		DOB		Approx. AGE	<input type="checkbox"/> MALE	RACE *		
								<input type="checkbox"/> FEMALE				
NAME: Last First Middle				AKA		DOB		Approx. AGE	<input type="checkbox"/> MALE	RACE *		
								<input type="checkbox"/> FEMALE				

- \* RACE CODES:**
- W - White
  - B - Black
  - H - Hispanic
  - I - American Indian
  - F - Filipino
  - P - Pacific Islander
  - C - Chinese
  - J - Japanese
  - A - Other Asian
  - Z - Asian Indian
  - D - Cambodian
  - G - Guamanian
  - U - Hawaiian
  - K - Korean
  - L - Laotian
  - S - Samoan
  - V - Vietnamese
  - O - Other
  - X - Unknown

CHECK HERE IF ADDITIONAL SHEET(S) ATTACHED

R  
C  
N  
  
A  
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Y

Copr. (C) West 2001 No Claim to Orig. U.S. Govt. Works

11 CA ADC S 901

11 CCR s 901

Cal. Admin. Code tit. 11, s 901

CALIFORNIA ADMINISTRATIVE CODE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 9. REPORT OF CHILD ABUSE

ARTICLE 2. REPORT OF SEXUAL ASSAULT

This database is current through 05/04/2001, Register 01, No. 18.

s 901. Definitions.

(a) "Audit Trail" means a method of tracking inquiries to ACAS to determine the requestor and the response provided. (See s 910)

(b) "Automated Child Abuse System" (ACAS) means the current system used by DOJ to electronically store reports of child abuse incidents submitted by CPAs.

(c) "Child" is the same term as defined in Penal Code section 11165.

(d) "Child Abuse" is the same term as defined in Penal Code section 11165.6.

(e) "Confirmation" means the DOJ process of contacting the agency that submitted the report to confirm that the investigative file is still available and is not unfounded. (See s 908)

(f) "CPA" means Child Protective Agency which is the same term as defined in Penal Code section 11165.9.

(g) "DOJ" means the Department of Justice.

(h) "General Neglect" is the same term as used in Penal Code section 11165.2.

(i) "Inconclusive report" is the same term as defined in Penal Code section 11165.12(c). This category was originally termed "unsubstantiated report" and was renamed by Chapter 842 of the Statutes of 1997 and became effective January 1, 1998.

(j) "Index" is the same term as used in Penal Code section 11170(a). The Index is currently known as the Automated Child Abuse System (ACAS).

(k) "Investigative File" or "Underlying Investigative File" means original and supplemental investigative documents developed by the CPA during an investigation of a child abuse incident and that resulted in a report to DOJ.

(l) "Possible Match" means DOJ staff has checked a specific name as the result of an inquiry and has, based on the name and other items of personal description (date of birth, social security number, driver's license number, or address), matched that name to an

existing report(s) in ACAS. The match is considered possible because it has not been confirmed absolutely with positive matching processes such as a fingerprint comparison.

(m) "Report" means an entry in ACAS reporting the investigation of a suspected incident of child abuse. All mandatory information as specified in regulation s 903 must be included for the report to be entered into ACAS. (See s 903)

(n) "Severe Neglect" is the same term as used in Penal Code section 11165.2.

(o) "Submitting Agency" means the agency that forwarded the completed report on which an ACAS entry is based.

(p) "Substantiated Report" is the same term as defined in Penal Code section 11165.12 (b).

(q) "Suspect" means a person who has been designated as a suspect in a CPA child abuse investigation and subsequently reported as such to DOJ.

(r) "TrustLine Registry" means the registry established pursuant to California Education Code section 8172. Effective July 1, 1998, Education Code section 8172 is repealed by Chapter 843 of the Statutes of 1997. The Trustline Registry will be operated by the Department of Social Services (DSS) pursuant to Health & Safety Code section 1596.60. (See s 908(b))

(s) "Unfounded" is the same term as defined in Penal Code section 11165.12(a).

(t) "Unsubstantiated" means a report that is determined by a CPA investigator not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect has occurred. (This category was renamed "inconclusive" by Chapter 842 of the Statutes of 1997 and became effective January 1, 1998).

(u) "Verification" means the process DOJ uses to insure that the data entered into ACAS is accurately entered into ACAS. (Sees 904)

(v) "Victim" means a person who has been designated as a victim in a CPA child abuse investigation report and subsequently reported as such to DOJ.

Note: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165, 11165.2, 11165.6, 11165.12(a), 11165.12(b), 11165.12(c) and 11170(a), Penal Code; and Section 1596.60, Health and Safety Code.

#### HISTORY

1. New section filed 7-17-98; operative 7-17-98 pursuant to Government Code section 11343.4(d). (Register 98, No. 29).

11 CA ADC s 901  
END OF DOCUMENT

Copr. (C) West 2001 No Claim to Orig. U.S. Govt. Works

11 CA ADC § 902

11 CCR § 902

Cal. Admin. Code tit. 11, § 902

CALIFORNIA ADMINISTRATIVE CODE  
TITLE 11. LAW  
DIVISION 1. ATTORNEY GENERAL  
CHAPTER 9. REPORT OF CHILD ABUSE  
ARTICLE 2. REPORT OF SEXUAL ASSAULT

This database is current through 05/04/2001, Register 01, No. 18.

§ 902. Purpose of ACAS.

The purpose of ACAS is to serve as the index of investigated reports of suspected child abuse received from California CPAs that is maintained by DOJ pursuant to Penal Code section 11170(a). The ACAS consists only of those reports of child abuse that meet the criteria specified in the Child Abuse and Neglect Reporting Act (Penal Code section 11164, et seq.) and that are complete as specified by these regulations.

The ACAS is a reference file and is used to refer authorized individuals or entities to the underlying child abuse investigative files maintained at the reporting CPA. It is the responsibility of authorized individuals or entities to obtain and review the underlying CPA investigative report file and make their own assessment of the merits of the child abuse report. They shall not act solely upon ACAS information.

Note: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11169 and 11170(a)(1) and (2), Penal Code.

HISTORY

1. New section filed 7-17-98; operative 7-17-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 29).

11 CA ADC § 902

END OF DOCUMENT

Copr. (C) West 2001 No Claim to Orig. U.S. Govt. Works

11 CA ADC S 903

11 CCR s 903

Cal. Admin. Code tit. 11, s 903

CALIFORNIA ADMINISTRATIVE CODE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 9. REPORT OF CHILD ABUSE

ARTICLE 2. REPORT OF SEXUAL ASSAULT

This database is current through 05/04/2001, Register 01, No. 18.

s 903. Standard Reporting Form for Reports of Child Abuse Maintained in ACAS.

(a) The following form shall be the standard reporting form for submitting summary reports of child abuse to DOJ:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(b) The "Child Abuse Investigation Report" form SS 8583 is the standard reporting form required to report investigative summaries of suspected incidents of child abuse to ACAS. Reporting CPAs shall submit form SS 8583 to DOJ after an active investigation has been conducted and the incident has been determined not to be unfounded. CPAs must obtain and use the most recent version of the SS 8583 when submitting the report to DOJ. The most recent version of the SS 8583 must be the basis for any report in an automated format submitted to DOJ.

If a report is submitted on a form pre-dating the current SS 8583, and DOJ receives an inquiry that requires a confirmation of the report, the information on the report originally submitted must comply with the reporting requirements of the current form SS 8583.

(Sees 908)

All information items on the standard report form SS 8583 should be completed by the investigating CPA. Certain information items on the SS 8583 must be completed by the CPA in order for it to be considered a "retainable report" by DOJ and entered into ACAS. Reports without these items will be returned to the contributor. These information items are:

- (1) The complete name of the investigating agency and type of agency.
- (2) The agency's report number or case name.
- (3) The action taken by the investigating agency.
- (4) The specific type of abuse.
- (5) The victim(s) name, birth date or approximate age, and gender.
- (6) Either the suspect(s) name or the notation "unknown".

Note: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11168, 11169(a) and 11170(a)(1), Penal Code.

HISTORY

1. New section filed 7-17-98; operative 7-17-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 29).

11 CA ADC s 903

END OF DOCUMENT

# CHILD ABUSE INVESTIGATION REPORT

To be Completed by Investigating Child Protective Agency  
Pursuant to Penal Code Section 11169  
(SHADED AREAS MUST BE COMPLETED)

FOR DOJ USE ONLY:  
**B300894**  
R  
C  
N  
  
A  
G  
Y

**A. INVESTIGATING AGENCY**

1. INVESTIGATING AGENCY (Enter complete name and check type):  
 POLICE     WELFARE  
 SHERIFF     PROBATION

2. AGENCY REPORT NO./CASE NAME:

3. AGENCY ADDRESS:                      Street                      City                      State                      ZIP

4. AGENCY TELEPHONE:                      EXT:

5. NAME OF INVESTIGATING PARTY:                      TITLE

6. DATE REPORT COMPLETED:                      MO    DA    YR

7. AGENCY CROSS-REPORTED TO:                      8. PERSON CROSS-REPORTED TO:

9. DATE CROSS-REPORTED:                      MO    DA    YR

10. ACTION TAKEN (check only one box):  
 (1) SUBSTANTIATED (Credible evidence of abuse):  
 (2) UNSUBSTANTIATED (Insufficient evidence of abuse, not unfounded)

(3) SUPPLEMENTAL INFORMATION (Attach copy of original report).  
 (a) UNSUBSTANTIATED                       (c) ADDITIONAL INFORMATION  
 (b) UNFOUNDED (false report, accidental, improbable)

11. COMMENTS:

**B. INCIDENT INFORMATION**

1. DATE OF INCIDENT:                      MO    DA    YR                      2. TIME OF INCIDENT:                      3. LOCATION OF INCIDENT:

4. NAME OF PARTY REPORTING INCIDENT:                      TITLE:                      5. EMPLOYER:                      6. TELEPHONE:

7. TYPE OF ABUSE (check one or more):  
 (1) PHYSICAL     (2) MENTAL     (3) INCEST (285 P.C.)     (4) OTHER SEXUAL ASSAULT:  
 (5) SEXUAL EXPLOITATION     (6) SEVERE NEGLECT     (7) GENERAL NEGLECT     (8) OTHER

8. IF ABUSE OCCURRED IN OUT-OF-HOME CARE, CHECK TYPE  
 (1) FAMILY DAY CARE     (2) CHILD CARE CENTER     (3) FOSTER FAMILY HOME     (4) SMALL FAMILY HOME     (5) GROUP HOME OR INSTITUTION-Enter name and address:

**C. INVOLVED PARTIES**

**VICTIMS**

1. NAME:                      Last                      First                      Middle                      AKA                      DOB                      MO    DA    YR                      APPROX. AGE:                       MALE     FEMALE    RACE: \*

ADDRESS:                      Street                      City                      State

DID VICTIM'S INJURIES RESULT IN DEATH?     YES     NO

NATURE OF INJURIES:

PRESENT LOCATION OF VICTIM:                      TELEPHONE NUMBER:                      IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) W&I)?  
 YES     NO

2. NAME:                      Last                      First                      Middle                      AKA                      DOB                      MO    DA    YR                      APPROX. AGE:                       MALE     FEMALE    RACE: \*

ADDRESS:                      Street                      City                      State

DID VICTIM'S INJURIES RESULT IN DEATH?     YES     NO

NATURE OF INJURIES:

PRESENT LOCATION OF VICTIM:                      TELEPHONE NUMBER:                      IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) W&I)?  
 YES     NO

**SUSPECTS**

1. NAME:                      Last                      First                      Middle                      AKA                      DOB                      MO    DA    YR                      APPROX. AGE:                       MALE     FEMALE    RACE: \*

ADDRESS:                      Street                      City                      State                      HGT                      WGT                      EYES                      HAIR                      SOCIAL SECURITY NUMBER:

RELATIONSHIP TO VICTIM:     (1) PARENT/STEPPARENT     (2) SIBLING     (3) OTHER RELATIVE  
 (4) FRIEND/ACQUAINTANCE     (5) STRANGER     (6) OTHER                      DRIVER'S LICENSE NUMBER:

2. NAME:                      Last                      First                      Middle                      AKA                      DOB                      MO    DA    YR                      APPROX. AGE:                       MALE     FEMALE    RACE: \*

ADDRESS:                      Street                      City                      State                      HGT                      WGT                      EYES                      HAIR                      SOCIAL SECURITY NUMBER:

RELATIONSHIP TO VICTIM:     (1) PARENT/STEPPARENT     (2) SIBLING     (3) OTHER RELATIVE  
 (4) FRIEND/ACQUAINTANCE     (5) STRANGER     (6) OTHER                      DRIVER'S LICENSE NUMBER:

**OTHER**

1. NAME:                      Last                      First                      Middle                       (1) PARENT/STEPPARENT    DOB                      MO    DA    YR                      APPROX. AGE:                       MALE     FEMALE    RACE: \*

(2) SIBLING

2. NAME:                      Last                      First                      Middle                       (1) PARENT/STEPPARENT    DOB                      MO    DA    YR                      APPROX. AGE:                       MALE     FEMALE    RACE: \*

(2) SIBLING

\*RACE CODES: W-White, B-Black, H-Hispanic, I-American Indian, F-Filipino, P-Pacific Islander, C-Chinese, J-Japanese, A-Other Asian, Z-Asian Indian, D-Cambodian, G-Guatemalan, U-Hawaiian, K-Korean, L-Laotian, S-Samoan, V-Vietnamese, O-Other, X-Unknown

CHECK HERE IF ADDITIONAL SHEET(S) IS ATTACHED.

SS 8583 (Rev. 3/91)                      PINK COPY-DOJ; WHITE COPY-Police or Sheriff; BLUE COPY-County Welfare or Probation; GREEN COPY-Attorney's Office                      91 91931

**CHILD ABUSE INVESTIGATION REPORT**  
**DEPARTMENT OF JUSTICE (DOJ) FORM SS 8583**  
**Guidelines for Use and Completion of Form SS 8583**

B300894

(For Specific Requirements Refer to the Child Abuse Reporting Law, California Penal Code Section 11165 through 11174.5)

**For Immediate Information on potential suspects/victims, please contact the Child Abuse Unit at (916) 739-5109.**

**Who Must Report**

**Interagency Reporting**

- A child protective agency (CPA - i.e., police and sheriff's department, county welfare and probation department) must report every suspected incident of child abuse it receives to:
  - another CPA in the county
  - the agency responsible for investigations under Welfare and Institutions Code 300
  - the district attorney's office

**DOJ Reporting**

- A CPA must report every incident of suspected child abuse for which they conduct an active investigation to DOJ on the Form SS 8583.
- NOTE: Reports are not accepted from agencies other than CPAs.*

**What Incidents Must Be Reported**

- Abuse of a minor child, i.e., a person under the age of 18 years, involving any one of the below abuse types:

**Interagency Reporting**

- sexual abuse
- physical abuse
- general neglect
- mental/emotional abuse
- severe neglect

*(Refer to Section 11165.1 through 11165.6 PC for PC citations and definitions)*

**DOJ Reporting**

- All of the above, excluding general neglect.
- Deaths of minors resulting from abuse or neglect.

**What Incidents Must Not Be Reported**

**Interagency Reporting**

- Incidents specifically exempted under cooperative arrangements with CPAs in your jurisdiction.

**DOJ Reporting**

- Unfounded reports - Reports which are determined to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined under Section 11165.12 PC.
- Acts of consensual sexual behavior between minors under the age of 14 years who are of similar age.
- Acts of negligence by a pregnant woman or other person(s) which adversely effect the well-being of a fetus.
- Reports of adults who report themselves as the victims of prior child abuse.
- Child stealing as defined in Sections 277 PC and 278 PC; unless involving sexual abuse, physical abuse, mental/emotional abuse, and/or severe neglect.
- Reasonable and necessary force by school employees to quell a disturbance threatening physical injury to person or damage to property (Section 11165.4 PC).
- Statutory rape, as defined in Section 261.5 PC.
- Mutual fights between minors (Section 11165.6 PC).

**When Must the Report be Submitted**

**Interagency Reporting**

- Telephone notification - immediately or as soon as practical.
- Written notification - within 36 hours of receiving information concerning the incident. (The Form SS 8583 can be used for cross-reporting purposes.)

**DOJ Reporting**

- A Form SS 8583 must be submitted as soon as an active investigation has been conducted and the incident has proven not to be unfounded.
- NOTE: No other form will be accepted in lieu of the Form SS 8583.*

**What Information is Required**

**General Instructions**

- All information blocks contained on the Form SS 8583 should be completed by the investigating CPA. If information is not available, indicate "UNK" in the applicable information block.

**Specific Instructions**

- INFORMATION BLOCKS ON THE FORM SS 8583 WHICH ARE SHADED GRAY MUST BE COMPLETED (An exception are the VICTIMS and SUSPECTS information blocks. Either a victim or suspect must be entered on the form. If a date of birth for either is not known, enter an approximate age, otherwise "UNK" may be entered.)
- IF ANY ONE OF THESE BLOCKS IS NOT COMPLETED, THE FORM WILL BE RETURNED TO THE CONTRIBUTOR.

Section A. "INVESTIGATING AGENCY", information block 10. "ACTION TAKEN" must be completed in accordance with the following definitions. (Check one of the boxes):

<p align="center">①</p> <p>10. ACTION TAKEN (check only one box):</p> <p><input type="checkbox"/> (1) SUBSTANTIATED (Credible evidence of abuse)</p> <p><input type="checkbox"/> (2) UNSUBSTANTIATED (Insufficient evidence of abuse, not unfounded)</p> <p align="center">②</p>	<p align="center">③      ④      ⑤</p> <p>(3) SUPPLEMENTAL INFORMATION (Attach copy of original report)</p> <p><input type="checkbox"/> (a) UNSUBSTANTIATED      <input type="checkbox"/> (c) ADDITIONAL INFORMATION</p> <p><input type="checkbox"/> (b) UNFOUNDED (false report, accidental, improbable)</p> <p align="center">⑥</p>
--	--

- ① SUBSTANTIATED - Acts determined, based upon some credible evidence, to constitute child abuse or neglect, as defined in Section 11165.6 PC.
- ② UNSUBSTANTIATED - Acts determined not to be unfounded, but there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6 PC, has occurred.
- ③ SUPPLEMENTAL INFORMATION - Attached information is being provided to supplement a previously submitted Form SS 8583.
- ④ UNSUBSTANTIATED - A previously submitted Form SS 8583 indicated as "SUBSTANTIATED" is being reclassified to "UNSUBSTANTIATED".
- ⑤ UNFOUNDED - A previously submitted Form SS 8583 indicated as "SUBSTANTIATED" or "UNSUBSTANTIATED" is being reclassified to "UNFOUNDED".
- ⑥ ADDITIONAL INFORMATION - Supplementary information is being provided for a previously submitted Form SS 8583.

**Where To Send The Report, Form SS 8583**

*(For DOJ reporting only)*

Department of Justice  
 Bureau of Criminal Statistics and Special Services  
 P. O. Box 903417  
 Sacramento, CA 94203-4170  
 ATTENTION: Child Abuse Central Index

**REMEMBER**

Submit completed Forms SS 8583s to DOJ as soon as possible because the case information may contribute to the success of another investigation. It is essential that the reports be complete, accurate and timely to provide the maximum benefit in protecting children and identifying and prosecuting suspects. If you have questions about DOJ REPORTING or need a victim or suspect name check, call the DOJ Child Abuse Unit at (916) 739-5109 or ATSS 497-5109.

Copr. (C) West 2001 No Claim to Orig. U.S. Govt. Works

11 CA ADC S 903

11 CCR s 903

Cal. Admin. Code tit. 11, s 903

CALIFORNIA ADMINISTRATIVE CODE  
TITLE 11. LAW  
DIVISION 1. ATTORNEY GENERAL  
CHAPTER 9. REPORT OF CHILD ABUSE  
ARTICLE 2. REPORT OF SEXUAL ASSAULT

This database is current through 05/04/2001, Register 01, No. 18.

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(a) The following form shall be the standard reporting form for submitting summary reports of child abuse to DOJ:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(b) The "Child Abuse Investigation Report" form SS 8583 is the standard reporting form required to report investigative summaries of suspected incidents of child abuse to ACAS. Reporting CPAs shall submit form SS 8583 to DOJ after an active investigation has been conducted and the incident has been determined not to be unfounded. CPAs must obtain and use the most recent version of the SS 8583 when submitting the report to DOJ. The most recent version of the SS 8583 must be the basis for any report in an automated format submitted to DOJ.

If a report is submitted on a form pre-dating the current SS 8583, and DOJ receives an inquiry that requires a confirmation of the report, the information on the report originally submitted must comply with the reporting requirements of the current form SS 8583.  
(Sees 908)

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- (1) The complete name of the investigating agency and type of agency.
- (2) The agency's report number or case name.
- (3) The action taken by the investigating agency.
- (4) The specific type of abuse.
- (5) The victim(s) name, birth date or approximate age, and gender.
- (6) Either the suspect(s) name or the notation "unknown".

Note: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11168, 11169(a) and 11170(a)(1), Penal Code.

HISTORY

1. New section filed 7-17-98; operative 7-17-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 29).

11 CA ADC s 903  
END OF DOCUMENT

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**CHILD WELFARE SERVICES PROGRAM  
INTAKE**

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**CHAPTER 31-100 INTAKE****31-101 GENERAL****31-101**

- .1 The county shall respond to all referrals for service which allege that a child is endangered by abuse, neglect, or exploitation.
  - .11 The county shall respond to referrals from county AFDC eligibility staff pursuant to Section 89-201.24 in accordance with the provisions of Section 31-530.
- .2 The social worker responding to a referral shall be skilled in emergency response.
- .3 The social worker shall respond to a referral by one of the following methods:
  - .31 Completing an Emergency Response Protocol, as described in Section 31-105.
  - .32 Conducting an in-person immediate investigation, as described in Section 31-115.
  - .33 Conducting an in-person investigation initiated within 10 calendar days from the date the referral was received, as described in Section 31-120.
- .4 The social worker shall conduct an in-person investigation of all referrals received from a law enforcement agency which allege abuse, neglect, or exploitation.
  - .41 No response is required to a cross-report from a law enforcement agency if the law enforcement agency has investigated and determined that there is no indication of abuse or neglect by a member of the child's household.
- .5 Within 30 calendar days of the initial removal of the child or the in-person investigation, or by the date of the dispositional hearing, whichever comes first, the social worker shall:
  - .51 Determine whether child welfare services are necessary and:
    - .511 If child welfare services are necessary, complete a case plan and begin implementation of the case plan in accordance with the time frames and schedules specified in Chapter 31-200.
    - .512 If child welfare services are unnecessary, close the referral/case, as appropriate.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 11254, 16208, 16501(f), 16501.1, 16504, and 16504(d), Welfare and Institutions Code.

**31-105 EMERGENCY RESPONSE PROTOCOL****31-105**

- .1 The social worker shall immediately initiate and complete the Emergency Response Protocol process when it is necessary to determine whether an in-person investigation is required. The social worker shall record all available and appropriate information on the Emergency Response Protocol form, SOC 423 (10/92), or an approved substitute. The social worker is not required to initiate the Emergency Response Protocol when the social worker has already determined an in-person investigation is required (i.e., law enforcement referrals, obvious immediate danger referrals).
  
- .11 In order to be approved as a substitute for the Emergency Response Protocol form, the substitute shall at a minimum contain all of the following elements:
  - .111 The following identifying information:
    - (a) Information regarding the child alleged to be abused, neglected, or exploited, which shall include:
      - (1) Information specified in Section 31-105.111(f),
      - (2) Case name, and
      - (3) Case number.
    - (b) Information regarding the referral, which shall include:
      - (1) Time and date referral received, and
      - (2) Location of alleged incident.
    - (c) Information regarding the reporter, which shall include:
      - (1) Name,
      - (2) Relationship to child,
      - (3) Agency affiliation, if a mandated reporter,
      - (4) Address, and
      - (5) Phone number (home/work).

**31-105 EMERGENCY RESPONSE PROTOCOL** **31-105**  
(Continued)

- (d) Information regarding each adult in the household, which shall include:
  - (1) Name,
  - (2) Relationship to child,
  - (3) Birthdate,
  - (4) Ethnicity,
  - (5) Primary language, if non-English speaking,
  - (6) Current location, and
  - (7) Phone number(s).
  
- (e) Information regarding the alleged perpetrator, which shall include:
  - (1) Elements specified in Sections 31-105.111(d)(1) through (7), and
  - (2) Access to the child.
  
- (f) Information regarding each minor child in the family, which shall include:
  - (1) Name,
  - (2) Birthdate,
  - (3) Sex,
  - (4) Ethnicity,
  - (5) Primary language, if non-English speaking,
  - (6) Current location,
  - (7) Name and address of school/daycare, if applicable, and

<b>31-105</b>	<b>EMERGENCY RESPONSE PROTOCOL</b> (Continued)	<b>31-105</b>
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- (8) Name, current location and phone number of each absent parent.
  
- .112 A description of the alleged incident, including consideration of the following risk factors:
  - (a) Precipitating incident including the following:
    - (1) Severity and frequency;
    - (2) Location and description of injury on child's body; and
    - (3) History of child abuse, neglect, or exploitation.
  - (b) Child characteristics including the following:
    - (1) Age, vulnerability, special circumstances; and
    - (2) Behavior, interaction with caretakers, siblings, and peers.
  - (c) Caretaker characteristics including the following:
    - (1) Ability to care for child;
    - (2) Interaction with children, other caretakers;
    - (3) Parenting skill/knowledge; and
    - (4) Substance abuse, criminal behavior, and mental health.
  - (d) Family factors including the following:
    - (1) Relationships, support systems;
    - (2) History of abuse, neglect, or exploitation;
    - (3) Presence of parent substitute;

<b>31-105</b>	<b>EMERGENCY RESPONSE PROTOCOL</b> (Continued)	<b>31-105</b>
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- (4) Environmental conditions; and
- (5) Family strengths.
  
- .113 Information regarding a records review.
  
- .114 Information regarding the collateral contacts, including the following:
  - (a) Date of contact,
  - (b) Name and phone number of each person contacted,
  - (c) Agency affiliation or person's relationship to the child, and
  - (d) Summary of information obtained.
  
- .115 Decision criteria. The decision whether or not an in-person investigation is necessary shall include, but not be limited to, consideration of the following factors:
  - (a) The ability to locate the child alleged to be abused and/or the family.
  - (b) The existence of an open case and the problem described in the allegation is being adequately addressed.
  - (c) The allegation meets one or more of the definitions of child abuse, exploitation or neglect contained in Sections 31-002(c)(7), 31-002(e)(9), or 31-002(n)(1).
  - (d) The alleged perpetrator is a caretaker of the child or the caretaker was negligent in allowing, or unable or unwilling to prevent, the alleged perpetrator access to the child.
  - (e) The allegation includes specific acts and/or behavioral indicators which are suggestive of abuse, neglect, or exploitation.

<b>31-105</b>	<b>EMERGENCY RESPONSE PROTOCOL</b> (Continued)	<b>31-105</b>
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- (f) There is additional information from collateral contacts or records review which invalidates the reported allegation.
- (g) There are previously investigated unsubstantiated or unfounded reports from the same reporter with no new allegations or risk factors.
- .116 The decision whether an in-person investigation is required, including the following outcome options.
  - (a) Evaluate out, with no referral to another community agency;
  - (b) Evaluate out, with a referral to an appropriate community agency; or
  - (c) Accept for in-person investigation.
- .117 When the decision is to evaluate out, either with or without a referral to another community agency, the following information:
  - (a) Rationale for the decision; and
  - (b) Supervisor approval.
- .2 The social worker shall complete the Emergency Response Protocol process by determining if an in-person investigation is required.
  - .21 The Emergency Response Protocol form, or approved substitute, is complete when the social worker has recorded enough information as specified in Section 31-105.1 to document the decision as to whether or not to make an in-person investigation and shall include:
    - .211 The specific decision outcome,
    - .212 The rationale for evaluating out the referral, and
    - .213 The supervisor approval.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 16208 and 16504, Welfare and Institutions Code.

**31-110 IN-PERSON INVESTIGATIONS 31-110**

- .1 If the social worker determines from the emergency response protocol that an in-person investigation is not necessary, the social worker shall document the determination.
- .2 If the social worker determines that an in-person investigation is not necessary, but that the services of another community agency are appropriate, the social worker shall refer the reporter to that agency.
  - .21 When a referral alleges non-familial child abuse, the social worker shall report the referral to the appropriate law enforcement agency as specified in Section 31-501.1.
- .3 If the social worker determines that an in-person investigation is necessary, the social worker shall make the in-person investigation immediately or within 10 calendar days, as appropriate.
- .4 The social worker shall conduct an in-person investigation for all law enforcement referrals either immediately or within 10 calendar days after receipt of a referral, as appropriate.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 16208, 16501(f), and 16504, Welfare and Institutions Code.

**31-115 IN-PERSON IMMEDIATE INVESTIGATION 31-115**

- .1 The social worker shall conduct an in-person immediate investigation when:
  - .11 The emergency response protocol indicates the existence of a situation in which imminent danger to a child, such as physical pain, injury, disability, severe emotional harm or death, is likely.
  - .12 The law enforcement agency making the referral states that the child is at immediate risk of abuse, neglect or exploitation.
  - .13 The social worker determines that the child referred by a law enforcement agency is at immediate risk of abuse, neglect, or exploitation.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 16208, 16501(f), and 16504, Welfare and Institutions Code.

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**CHILD WELFARE SERVICES PROGRAM  
INTAKE**

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**31-120**

**Regulations**

**31-120      IN-PERSON INVESTIGATION WITHIN 10 CALENDAR DAYS      31-120**

- .1    The social worker shall conduct an in-person investigation of the allegation of abuse, neglect, or exploitation within 10 calendar days after receipt of a referral when:
  - .11    The emergency response protocol indicates that an in-person investigation is appropriate and the social worker has determined that an in-person immediate investigation is not appropriate.
  - .12    The law enforcement agency making the referral does not state that the child is at immediate risk of abuse, neglect, or exploitation and the social worker determines that an in-person immediate investigation is not appropriate.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 16208, 16501(f), and 16504, Welfare and Institutions Code.

**31-125      INVESTIGATION REQUIREMENTS      31-125**

- .1    The social worker initially investigating a referral shall determine the potential for or the existence of any conditions(s) which places the child, or any other child in the family or household, at risk and in need of services and which would cause the child to be a person described by Welfare and Institutions Code Sections 300(a) through (j).
  - .11    The social worker shall not determine the child to be at risk and in need of services, or to be a person described by Welfare and Institutions Code Section 300(a) through (j) based solely on the existence of any of the following conditions described in Welfare and Institutions Code Sections 300(a) through (c):
    - .111    "...reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury,"
    - .112    "...lack of an emergency shelter for the family," or
    - .113    "...the willful failure of the parent or guardian to provide adequate mental health treatment...based on a sincerely held religious belief."

**31-125 INVESTIGATION REQUIREMENTS** **31-125**  
(Continued)

- .12 The social worker shall not determine the child to be in need of child welfare services based solely on the existence of the conditions specified in Welfare and Institutions Code Sections 16509, 16509.1 and 16509.2.

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- .121 Welfare and Institutions Code Section 16509 states:

Cultural and religious child-rearing practices and beliefs which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child.

- .122 Welfare and Institutions Code Section 16509.1 states:

No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to have been neglected within the purview of this chapter.

- .123 Welfare and Institutions Code Section 16509.2 states:

The physical or mental incapacity, or both, in itself, of a parent or a child, shall not result in a presumption of need for child welfare services.

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- .2 The social worker investigating the referral shall have in-person contact with all of the children alleged to be abused, neglected or exploited, and at least one adult who has information regarding the allegations.
- .21 If as a result of the investigation the social worker determines that the referral is unfounded pursuant to Penal Code Section 11165.12, the social worker shall document the determination in the case record.

**31-125 INVESTIGATION REQUIREMENTS** **31-125**  
(Continued)

- .22 If as a result of the investigation the social worker does not find the referral to be unfounded, the social worker shall:
- .221 Conduct an in-person investigation with:
- (a) All children present at the time of the initial in-person investigation.
  - (b) All parents who have access to the child(ren) alleged to be at risk of abuse, neglect or exploitation.
    - (1) A noncustodial parent shall be considered to have access if he/she has regular or frequent in-person contact with the child(ren).
- .222 Make necessary collateral contacts with persons having knowledge of the condition of the children.
- .23 If as a result of the investigation the social worker has determined the referral is not unfounded, and has completed the requirements in Section 31-125.22 and documented the results in the case record, the decision whether to conduct an in-person investigation with any additional children who were not present at the initial in-person investigation shall be at the discretion of the county.
- .3 If as a result of the investigation it is determined that neither child welfare services nor a referral to any other community agency is necessary, the social worker shall document this determination.
- .4 If as a result of the investigation it is determined that child welfare services are unnecessary, but that the services of another community agency are appropriate, the social worker shall refer the child and/or family to such agency and shall document the determination and referral(s).
- .5 If as a result of the investigation the social worker determines services are necessary, the social worker shall:
- .51 Perform the requirements specified in Chapter 31-200.
- .511 If a dependency petition is to be filed and it is determined that the child is or may be an Indian child, the social worker shall follow the procedures in Section 31-515.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 300, 16504, 16509, and 16509.1, Welfare and Institutions Code; Section 11165.12, Penal Code; and 25 USCA Section 1901 et seq.

**31-130 LAW ENFORCEMENT ASSISTANCE 31-130**

- .1 The social worker shall request law enforcement assistance under either of the following circumstances:
  - .11 The physical safety of family members or county staff is endangered.
  - .12 A child must be placed in temporary custody and the social worker is not deputized as a peace officer or authorized by Welfare and Institutions Code Section 306(b) to take temporary custody.
    - .121 The social worker may take a child into temporary custody without the assistance of law enforcement whenever authorized to do so under Welfare and Institutions Code Section 306.
- .2 Law enforcement assistance shall be used as an aid to emergency response services and not as a substitute for any of the following:
  - .21 Completion of the emergency response protocol as specified in Section 31-105.
  - .22 Performance of the in-person investigation specified in Section 31-110.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 306, 10553, and 10554, Welfare and Institutions Code.

**31-135 AUTHORITY FOR REMOVAL OF CHILD 31-135**

- .1 When the social worker determines that the child cannot be safely maintained in his/her own home, the social worker shall ensure that authority to remove the child exists prior to removal.
  - .11 If removal is voluntary, such authority shall be a written consent of the parent/guardian.
  - .12 If removal is involuntary, such authority shall be temporary custody as specified in Welfare and Institutions Code Sections 305 and 306, or a court order.
    - .121 If a determination has been made in accordance with Welfare and Institutions Code Section 308 that the minor or his/her foster family would be endangered or his/her custody would be disturbed by the disclosure to the parent(s)/guardian(s) of the minor's exact whereabouts, the social worker shall notify immediately the parent(s)/guardian(s) either in person or by telephone of his/her right to apply for judicial review of that determination within 24 hours.

**31-135**      **AUTHORITY FOR REMOVAL OF CHILD** **31-135**  
(Continued)

- (a)      If the social worker fails to notify the parent(s)/guardian(s) as specified in Section 31-135.121, the social worker shall document in the case record the reason(s) for failure to do so.
  
- .2      The social worker shall document in the case record any preplacement preventive efforts made or services provided.
  - .21      If first contact with the family occurs during an emergency situation in which the child cannot safely remain in the home, even with reasonable services being provided, the social worker shall document those circumstances in the case record.
  - .22      If the child has been removed due to the absence of the parent(s), for one of the reasons stated in Welfare and Institutions Code Section 361(b)(5), the social worker shall document those circumstances in the case record.
  
- .3      If the child is in out-of-home placement following a voluntary removal, and the social worker determines that continued out-of-home placement is necessary for the child's protection, the county shall implement a voluntary placement agreement as specified in Section 31-430.31.
  
- .4      If the child is in temporary custody following an involuntary removal, and the social worker determines that continued detention is necessary for the child's protection, the social worker shall take the following action:
  - .41      File a petition for detention of and jurisdiction over the child within 48 hours of the child's removal from his/her home, excluding nonjudicial days.

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- .411      Juvenile court procedures regarding detention of minors and filing petitions are described in Welfare and Institutions Code Sections 311(a), 319, and 332.

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NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 305, 306, and 308 (as amended by Assembly Bill 4122, Chapter 320, Statutes of 1990), Welfare and Institutions Code.

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**CHILD WELFARE SERVICES PROGRAM  
ASSESSMENT AND CASE PLAN**

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**CHAPTER 31-200 ASSESSMENT AND CASE PLAN****31-201 ASSESSMENT AND CASE PLANNING PROCESS****31-201**

- .1 When it has been determined that child welfare services are to be provided the social worker shall:
- .11 Complete an assessment.
    - .111 An assessment is completed for each child for whom child welfare services are to be provided, and includes gathering and evaluating information relevant to the case situation and appraising case services needs.
  - .12 Determine the case plan goal.
    - .121 When determining the case plan goal, the social worker shall consider the following order of priority for services:
      - (a) Family maintenance services - In order to maintain the child in his/her own home, when the protective needs of the child can be met.
      - (b) Family reunification services - If the family potentially can be successfully reunified within the time limits specified in Welfare and Institutions Code Sections 16507 and 16507.3. If the child is placed out of home and is receiving family reunification services, the case plan shall have two tracks:
        - (1) The family reunification track, which consists of services described in Welfare and Institutions Code Section 16501(h).
        - (2) The concurrent services track, which identifies the child's permanency alternative and the services necessary to achieve legal permanence should family reunification fail.
      - (c) Permanent placement services - Only when there are no feasible means of maintaining or reuniting the child with his/her parent(s)/guardian(s).
        - (1) When the child has been detained and one or more of the following circumstances exist, the social worker may recommend permanent placement services.
          - (A) The whereabouts of the parent(s)/guardian(s) is unknown.
          - (B) The parent(s)/guardian(s) is suffering from a mental disability that renders him/her incapable of utilizing family reunification services.

**31-201 ASSESSMENT AND CASE PLANNING PROCESS**  
(Continued)**31-201**

- (2) When the child is detained, and one or more of the following circumstances exist, the social worker must recommend permanent placement services, unless the court finds, by clear and convincing evidence, that reunification is in the best interests of the child.
- (A) The child or sibling of the child had been previously adjudicated a dependent as a result of physical or sexual abuse; had been removed from the custody of the parent(s)/guardian(s); had been returned to the custody of the parent(s)/guardian(s); and has again been removed due to additional physical or sexual abuse.
  - (B) The parent(s)/guardian(s) of the child has caused the death of another child through abuse or neglect.
  - (C) The child is under the age of five and has come under court jurisdiction due to severe physical abuse as specified in Welfare and Institutions Code Section 300(e).
  - (D) The child has come under court jurisdiction due to severe sexual abuse (Welfare and Institutions Code Section 361.5(b)(6)) or severe physical abuse (Welfare and Institutions Code Section 361.5(b)(6)) inflicted upon the child, a sibling or half-sibling.
  - (E) The parent(s)/guardian(s) is incarcerated or institutionalized and the social worker has determined, based on the criteria specified in Welfare and Institutions Code Section 361.5(e)(1) that permanent placement services are appropriate.
  - (F) The parent or guardian of the minor has advised the court that he or she is not interested in receiving family maintenance or reunification services pursuant to Welfare and Institutions Code Section 361.5(b)(13).
- (3) When recommending a permanent placement services, the social worker shall adhere to the following order of priority for permanent placement:
- (A) Adoption - Before the social worker recommends to the court that family reunification services be terminated, a case review conducted jointly by foster care and adoption staff to determine potential for adoption shall have been completed.

**31-201 ASSESSMENT AND CASE PLANNING PROCESS 31-201**  
(Continued)

1. If the case review is to address a potential relative adoption, it shall address whether a kinship adoption is in the child's best interest.
  2. When a case is referred for adoption planning, it shall remain under county supervision for purposes of providing child welfare services until dismissal of the dependency and issuance of a final decree of adoption.
- (B) Guardianship - If kinship adoption or adoption is not possible, the case shall be reviewed for guardianship. Preference shall be given to guardianships by relatives.

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1. Welfare and Institutions Code Section 361.3 specifies that all relative caregivers must be assessed by a specific set of criteria that includes safety of the home, character of the relative, and ability to provide permanency for the child, among other elements. This assessment provides the foundation for determining whether or not guardianship with the relative is appropriate and in the child's best interest.
2. To provide assistance in meeting the assessment criteria in Welfare and Institutions Code Section 361.3, CDSS issued guidelines to counties on March 1, 1999 pursuant to Welfare and Institutions Code Section 16501.1(i). Those guidelines were distributed to the counties via All County Information Notice I-18-99.

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<b>31-201</b>	<b>ASSESSMENT AND CASE PLANNING PROCESS</b>	<b>31-201</b>
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(Continued)

(C) Long term foster care - Only if adoption or guardianship is not possible, a recommendation for long-term foster care placement shall be made. Exercise of this option requires continued efforts to obtain adoption, guardianship or preparation for independence for the child.

.13 Develop the case plan which shall identify the following factors and document the plan as specified in Section 31-205:

.131 Objectives to be achieved.

.132 Specific services to be provided.

.133 Case management activities to be performed.

(a) Parent(s)/guardian(s) shall be requested to participate in the development of the case plan.

(b) Parents shall be advised that, at any time during the child's dependency, they may request adoption counseling and services.

| NOTE: Authority Cited: Sections 10553, 10554, and 11369, Welfare and Institutions Code. Reference: Sections 358.1(e) and 361 (as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), 361.5, 366.23, 16501, 16501.1 (as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), 16501.1(f), 16506, 16507, and 16508, Welfare and Institutions Code; Sections 8714.5 and 8714.7 (as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), Family Code.

**31-205 ASSESSMENT DOCUMENTATION****31-205**

.1 The social worker shall document the following assessment information:

- (a) The relevant social, cultural, and physical factors relating to the following:
  - (1) The child.
  - (2) The child's parent(s)/guardian(s) or person(s) serving in that role.
  - (3) Other significant persons, including children and siblings, who are known to reside in the home.
- (b) The apparent problems, and possible causes of those problems, which require intervention and the family strengths which could aid in problem resolution.
- (c) Whether the child may safely remain at home if preplacement preventive services are provided, and, if so, the specific services to be provided.
- (d) If the child is a parent, any special needs of the child with regard to his/her role as a parent.
- (e) If the child has been removed based on one of the findings pursuant to Welfare and Institutions Code Section 361.5(b), the circumstances relating to the finding and whether failure to order family reunification services would likely be detrimental to the child.
- (f) Any known social services previously offered and/or delivered to the child or family and the result of those services.
- (g) If family reunification services are recommended, relatives or others who could provide or assist with legal permanency - adoption, guardianship, or preparation for independence - should family reunification fail.
- (h) The need, if known, for any health/medical care.
- (i) The condition(s) which are met that allow a child under the age of six to be placed in a group home in accordance with Section 31-405.1(b).
- (j) The condition(s) which is met that allows a child to be placed in a community treatment facility in accordance with Section 31-406.

<b>31-205</b>	<b>ASSESSMENT DOCUMENTATION</b> (Continued)	<b>31-205</b>
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- .2 The county shall be permitted to combine the assessment with the case plan as one document provided that:
  - .21 The assessment and the case plan are each readily identifiable as such; and
  - .22 The combined document contains all of the necessary components of both the assessment and the case plan.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 361, 361.5, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 11467.1, 16501, 16501(e), 16501.1(e)(9), and 16507, Welfare and Institutions Code; 42 U.S.C. Sections 675(1) and 677, and Sections 1502 and 1502(a)(8), Health and Safety Code.

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**31-206 CASE PLAN DOCUMENTATION****31-206**

- .1 The social worker shall document in the case plan the case plan goal which the social worker has determined as specified in Section 31-201.12 to be appropriate for each child.
- .2 The social worker shall document in the case plan the following information regarding case plan objectives for each person named in the case plan:
  - .21 Measurable, time-limited objectives based on the problems and family strengths identified in the assessment.
    - .211 The social worker shall include specific descriptions of the responsibilities of the parent(s)/guardian(s) in meeting the case plan objectives.
    - .212 Discussion of advisement to the parent(s) that at any time during the child's dependency he/she/they may request adoption counseling and services.
  - .22 The specific services to be provided and the case management activities to be performed in order to meet the case plan objectives and goal.
    - .221 The social worker shall include specific descriptions of the responsibilities of the social worker, other county staff, other individuals, and community agencies in the provision of services and the performance of case management activities.
    - .222 For children in out-of-home care, the social worker shall document the two services tracks identified for children receiving family reunification services.
      - (a) The services to be provided to assist the parents in reunifying with the child as identified in the family reunification services track.
      - (b) The services to be provided and steps to be taken to implement the permanency alternative identified in the case plan if family reunification fails.
  - .23 The projected date for completion of case plan objectives and the date child welfare services are to be terminated.
  - .24 The schedule of planned social worker contacts and visits with the child and the family in accordance with Sections 31-320 and 31-325.
    - .241 The social worker shall document in the case record the justification for any exceptions to the contact or visit requirements specified in Sections 31-320 and 31-325.

<b>31-206</b>	<b>CASE PLAN DOCUMENTATION</b> (Continued)	<b>31-206</b>
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- .3 For children receiving out-of-home care, the social worker shall also document in the case plan, the following:
  - .31 An assessment of the child's placement needs and a determination and description of the type of home or institution which will best meet those needs.
    - .311 If siblings are not placed together, the social worker shall document the diligent efforts to place siblings together and reasons why they were not placed together, if applicable.
    - .312 For children placed out-of-county, the rationale for out-of-county placement, and a description of the specific responsibilities of the sending and receiving counties, in accordance with the provisions of Section 31-505.
      - (a) When an out-of-state group home placement is recommended or made, the case plan shall document the recommendation of the multidisciplinary team, pursuant to MPP Section 31-066 and the rationale for this particular placement. The case plan shall address what in-state services or facilities were used or considered and why they were not recommended.
    - .313 For children placed in a foster family home, group home, or other child care institution that is either a substantial distance from the home of the parent(s) or guardian(s) or out-of-state, the case plan shall specify the reasons why such placement is the most appropriate placement selection and whether the placement continues to be in the best interest of the child.
    - .314 For a group home and community treatment facility placement, the case plan shall have a schedule of planned social worker/probation officer monthly visits.
    - .315 When a community treatment facility placement is recommended or made, the case plan shall specify the reasons why this placement is the most appropriate placement selection pursuant to Section 31-406.
    - .316 For a community treatment facility placement, the case plan shall specify how the continuing stay criteria will be met as specified in Section 1924 of the California Code of Regulations, Title 9, Chapter 11.

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.317 California Code of Regulations, Title 9, Section 1924 states:

"(a) Continuing stay criteria used by a CTF shall include documentation by the CTF psychiatrist of the continuation of admission criteria in addition to written documentation from the appropriate interagency placement committee, or other designated external case manager, such as the probation department, county mental health department, or private insurance utilization review personnel, supporting the decision for continued placement of the child within a CTF. Continuing stay criteria shall be reviewed by a CTF in intervals not to exceed ninety (90) days. Findings shall be entered into each child's facility record.

"(b) Individuals who are special education pupils identified in paragraph (4) of subdivision (c) of Section 56026 of the Education Code and who are placed in a CTF prior to age eighteen pursuant to Chapter 26.5 of the Government Code may continue to receive services through age 21 provided the following conditions are met:

"(1) They continue to satisfy the requirements of subsection (a);

"(2) They have not graduated from high school;

"(3) They sign a consent for treatment and a release of information for CTF staff to communicate with education and county mental health professionals after staff have informed them of their rights as an adult.

"(4) A CTF obtains an exception from the California Department of Social Services to allow for the continued treatment of the young adult in a CTF pursuant to Section 80024, Title 22, Division 6, Chapter 1 of the California Code of Regulations."

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**HANDBOOK ENDS HERE**

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<b>31-206</b>	<b>CASE PLAN DOCUMENTATION (Continued)</b>	<b>31-206</b>
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- .32 The schedule of planned parent(s)/guardian(s) contacts and visits with the child, in accordance with Section 31-340.
- .33 The schedule of planned visitation of the child by his/her grandparents as specified in Welfare and Institutions Code Section 16507(a).
- .34 The schedule of planned social worker contacts and visits with the child's out-of-home care provider, in accordance with Section 31-330.
- .35 The health and education information about the child.
  - .351 This information shall include the following, as available.
    - (a) The names and addresses of the child's health and educational providers.
    - (b) The child's grade level performance.
    - (c) The child's school record.
    - (d) Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement.
    - (e) A record of the child's immunizations.
    - (f) The child's known medical problems.
    - (g) The child's medications.

**31-206 CASE PLAN DOCUMENTATION** **31-206**  
(Continued)

- .352 If any of the required health and education information is not contained in the case plan, the case plan shall document where the information is located.
- .36 A plan which will ensure that the child will receive medical and dental care which places attention on preventive health service through the Child Health and Disability Prevention (CHDP) program, or equivalent preventive health services in accordance with the CHDP program's schedule for periodic health assessment.
- .361 Each child in placement shall receive a medical and dental examination, preferably prior to, but not later than, 30 calendar days after placement.
- .362 Arrangements shall be made for necessary treatment.
- .37 For each youth in placement 16 years of age or older, the case plan shall incorporate the Transitional Independent Living Plan (TILP) as specified in Section 31-236.
- .38 For each child for whom a dependency petition has been filed, the recommendation that the right of the parent(s)/guardian(s) to make education decisions be limited by the court pursuant to Welfare and Institutions Code Section 361(a), if applicable.
- .4 The social worker shall document in the child's case file the determination of whether it is in the best interest of the child to refer the child's case to the local child support agency and the basis for this determination in accordance with Section 31-503.
- .5 The case plan shall be considered complete only if all of the elements specified in Section 31-206 have been documented and the social worker's supervisor has signed and dated the case plan.
- .51 The social worker may complete a single case plan for the family, provided that the planned services are individually identified for each person named in the case plan.
- .52 If any of the elements specified in Section 31-206 are not immediately available, the social worker shall document in the case plan the following information:
  - .521 The social worker's attempts to obtain the information.
  - .522 The social worker's plan for obtaining the information including the time frame in which the information is expected to be obtained.

<b>31-206</b>	<b>CASE PLAN DOCUMENTATION (Continued)</b>	<b>31-206</b>
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NOTE: Authority Cited: Sections 10553, 10554, and 16501.1, Welfare and Institutions Code; and Section 17552, Family Code; and Public Law 109-288. Reference: Sections 358.1(e), 361, 361(b), 361.5, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 16002, 16501, 16501.1(e), and 16507, Welfare and Institutions Code; 42 U.S.C. Sections 675(1) and 677; Sections 7901, 7911, 7911.1, 7912, and 17552, Family Code; and Sections 1502 and 1502(a)(8), Health and Safety Code; and Public Law 109-288.

<b>31-210</b>	<b>CASE PLAN TIME FRAMES AND ADMINISTRATIVE REQUIREMENTS FOR CHILDREN FOR WHOM A DEPENDENCY PETITION HAS BEEN FILED</b>	<b>31-210</b>
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- .1 Within 30 calendar days of the in-person investigation (i.e., first face-to-face contact) or initial removal, or by the date of the dispositional hearing, whichever comes first, the social worker shall:
  - .11 Complete and sign the case plan as specified in Section 31-206.
  - .12 Explain the purpose and the content of the case plan to the parent(s)/guardian(s) named in the case plan.
  - .13 Request the parent(s)/guardian(s) to sign the case plan as an indication of case plan approval and willingness to participate in service activities.
    - .131 If unable to obtain the signature of the parent(s)/guardian(s) as specified in Section 31-210.13, the county shall nevertheless provide services, but shall document in the case plan the reason(s) for the failure to obtain the signature of the parent(s)/guardian(s).
  - .14 Provide a copy of the completed case plan to the parent(s)/guardian(s).
  - .15 Obtain the signed and dated written approval of the social worker's supervisor on the case plan or the court report.
    - .151 The social worker's supervisor must sign the case plan or the court report in which the case plan is included prior to submission to the court or within 30 days of the initial removal or initial response, whichever occurs first.

<b>31-210</b>	<b>CASE PLAN TIME FRAMES AND ADMINISTRATIVE REQUIREMENTS FOR CHILDREN FOR WHOM A DEPENDENCY PETITION HAS BEEN FILED (Continued)</b>	<b>31-210</b>
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- (a) In so signing, the signature of the social worker's supervisor shall be deemed to have certified that the case plan was reviewed by the supervisor and the case plan goal and the planned services for meeting that goal are appropriate.
- .16 Begin implementation of the case plan in accordance with the time frames and schedules specified in the case plan.
- .2 The case plan shall be included in the court report and submitted to the court at least 48 hours prior to the dispositional hearing specified in Welfare and Institutions Code Section 358.
- .21 If the dispositional hearing specified in Welfare and Institutions Code Section 358 is not convened within six months of the date the case plan was completed, the case plan update must be included in the court report and submitted to the court at least 48 hours prior to the dispositional hearing.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 358(b), 361, 16501(a), and 16501.1(d) and (e), Welfare and Institutions Code.

<b>31-215</b>	<b>CASE PLAN TIME FRAMES AND ADMINISTRATIVE REQUIREMENTS FOR CHILDREN AND FAMILIES WHO WILL VOLUNTARILY RECEIVE SERVICES</b>	<b>31-215</b>
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- .1 Within 30 calendar days of the in-person investigation (i.e., first face-to-face contact), the social worker shall:
  - .11 Complete and sign the case plan as specified in Section 31-205.
  - .12 Explain the purpose and content of the case plan to the parent(s)/guardian(s) named in the case plan.
  - .13 Request the parent(s)/guardian(s) named in the case plan to sign the case plan.
    - .131 If the parent(s)/guardian(s) refuses to sign the case plan for voluntary services, voluntary services shall not be provided.
  - .14 For children who will voluntarily receive out-of-home care, request the parent(s)/guardian(s) named in the case plan to sign the placement agreement parent/agency.

**31-215**      **CASE PLAN TIME FRAMES AND ADMINISTRATIVE REQUIREMENTS FOR CHILDREN AND FAMILIES WHO WILL VOLUNTARILY RECEIVE SERVICES** (Continued) **31-215**

- .141    If the parent(s)/guardian(s) named in the case plan refuses to sign the placement agreement parent/agency, voluntary out-of-home services shall not be provided.
  
- .15    Obtain the signed and dated written approval of the social worker's supervisor on the case plan.
  
- .151    In so signing, the signature of the social worker's supervisor shall be deemed to have certified that the case plan was reviewed by the supervisor and the case plan goal and the planned services for meeting that goal are appropriate.
  
- .16    Provide a copy of the completed case plan to the parent(s)/guardian(s).

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 16501.1(f)(7) and 16507, Welfare and Institutions Code.

**31-220**      **CASE PLAN UPDATES** **31-220**

- .1    The case plan shall be updated as service and permanency needs of the child and family dictate and to assure achievement of service and permanency objectives.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 16501.1(d), Welfare and Institutions Code.

**31-225**      **CASE PLAN UPDATE DOCUMENTATION** **31-225**

- .1    Each case plan update shall document the following information:
  - .11    Any changes in the information contained in the case plan.
  - .12    Specific information about the current condition of the child and family.
  - .13    If the parent(s)/guardian(s) is part of the case plan, a description of the degree of compliance by the parent(s)/guardian(s) with the written case plan, including the following:
    - .131    Progress in working toward achievement of each case plan objective.

**31-225 CASE PLAN UPDATE DOCUMENTATION (Continued) 31-225**

- (a) If the case plan's goal is family reunification, documentation shall also include the efforts to achieve the permanency alternative if family reunification fails.
- .132 Cooperation in keeping appointments.
- .133 For children in out-of-home placement, visiting patterns of the parent(s)/guardian(s) with the child, including, but not limited to, the following:
  - (a) Frequency of visits.
  - (b) Initiation by parent(s)/guardian(s).
  - (c) Cooperation in keeping appointments.
  - (d) Interaction with child and/or foster parent(s).
- .14 The case plan adequacy and continued appropriateness.
  - .141 The need, if any, for a change in the case plan.
- .15 The joint assessment conducted pursuant to Welfare and Institutions Code Sections 361.5(g), 366.21(i), or 366.22(b), when that assessment has been ordered by the court.
- .16 Any subsequent discussions with the parent(s) regarding the advisement made pursuant to Section 31-201.133(b) that he/she may request adoption counseling and services.
- .2 The case plan update shall be considered complete only if all of the elements specified in Section 31-225 have been documented and the social worker's supervisor has signed and dated the case plan update.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 361 and 361.5 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997) and 16501.1(d), Welfare and Institutions Code; and 42 USC Section 675(1).

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**31-230 CASE PLAN UPDATE TIME FRAMES AND ADMINISTRATIVE REQUIREMENTS FOR COURT-ORDERED CASES 31-230**


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- .1 The social worker shall:
- .11 Complete a case plan update as often as the service needs of the child and family dictate and as is necessary in order to assure achievement of service objectives. At a minimum, the social worker shall complete a case plan update in conjunction with each status review hearing, but no less often than once every six months.

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**HANDBOOK BEGINS HERE**


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- .111 Status review hearings are conducted pursuant to Sections 366.21, 366.22, 366.25, or 366.26 of the Welfare and Institutions Code.

The dispositional hearing held pursuant to Welfare and Institutions Code Section 358 may be considered the initial status review hearing if it is held within the first six months of a child's original placement date as defined in Welfare and Institutions Code Section 11400(p) and makes all of the findings required by Welfare and Institutions Code Section 366(a).

- .112 Welfare and Institutions Code Section 11400(p) specifies as follows:

"Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

- .113 Welfare and Institutions Code Sections 366(a) and (c) specify as follows:

"(a) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.25 or 366.26 is completed. The court shall determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and shall project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship."

"(c) If the child has been placed out-of-state, each review described in subdivision (a), and reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state placement continues to be the most appropriate placement selection and in the best interest of the child."

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**HANDBOOK CONTINUES**


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**HANDBOOK CONTINUES**

.114 Welfare and Institutions Code Section 361.21 specifies as follows:

"(a) The court shall not order the placement of a minor in an out-of-state group home, unless the court finds, in its order of placement, that both of the following conditions have been met:

"(1) The out-of-state group home is licensed or certified for the placement of minors by an agency of the state in which the minor will be placed.

"(2) The out-of-state group home meets the requirements of Section 7911.1 of the Family Code.

"(b) At least every six months, the court shall review each placement made pursuant to subdivision (a) in order to determine compliance with that subdivision.

"(c) A county shall not be entitled to receive or expend any public funds for the placement of a minor in an out-of-state group home unless the requirements of subdivisions (a) and (b) are met."

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**HANDBOOK ENDS HERE**

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- .12 Obtain the signed and dated written approval of the social worker's supervisor on either the case plan update or the court report prior to submission of the case plan update and the court report to the court.
- .13 Provide a copy of the completed case plan update to the parent(s)/guardian(s) and discuss the case progress, problems, and case plan status.
- .14 Submit the case plan update and the court report to the court at least 10 calendar days prior to the scheduled hearing.
- .141 Updates to the case plan made during the period between review hearings which do not change the case plan goal may be approved by the social worker's supervisor and need not be approved by the court. The social worker's supervisor shall document approval of the updated case plan by signing and dating the case plan update.
- .15 Request the parent(s)/guardian(s) named in the case plan to sign the case plan update as an indication of plan approval and willingness to participate in service activities.

**31-230**      **CASE PLAN UPDATE TIME FRAMES AND ADMINISTRATIVE REQUIREMENTS FOR COURT-ORDERED CASES (Continued)**      **31-230**

- .151      If unable to obtain the signature of the parent(s)/guardian(s) as specified in Section 31-230.15, the county shall nevertheless provide services. However, the social worker shall document in the case plan the reason(s) for the failure to obtain the signature of the parent(s)/guardian(s).

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 361.21, 366(a), and 16501.1(d) and (f), Welfare and Institutions Code and Sections 7901, 7911 and 7911.1, Family Code.

**31-235**      **CASE PLAN UPDATE TIME FRAMES AND ADMINISTRATIVE REQUIREMENTS FOR VOLUNTARY CASES**      **31-235**

- .1      The social worker shall:
  - .11      Complete a case plan update as often as the service needs of the child and family dictate and as is necessary in order to assure achievement of service objectives, but no less frequently than once each six months.
  - .12      Provide a copy of the completed case plan update to the parent(s)/guardian(s) and discuss the case progress, problems, and case plan status.
  - .13      Request the parent(s)/guardian(s) named in the case plan update to sign the case plan update as an indication of plan approval and willingness to participate in service activities.
    - .131      If the parent(s)/guardian(s) named in the case plan update refuses to sign the case plan update for voluntary services, voluntary services shall not be provided.
  - .14      Obtain signed and dated written approval of the social worker's supervisor on the case plan update.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 16501.1(f)(7) and 16507, Welfare and Institutions Code.

**31-236 TRANSITIONAL INDEPENDENT LIVING PLAN (TILP) 31-236**

- (a) For each youth in placement, 15½ and not yet 16 years of age, the social worker/probation officer of the county of jurisdiction shall insure that the youth shall actively participate in the development of the TILP. The TILP describes the youth's current level of functioning; emancipation goals identified in Section 31-236.6; the progress towards achieving the TILP goals; the programs and services needed, including, but not limited to, those provided by the ILP; and identifies the individuals assisting the youth. The TILP shall be reviewed, updated, approved, and signed by the social worker/probation officer and the youth every six months.

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**HANDBOOK BEGINS HERE**

- (1) While foster care providers, ILP staff, and others may administer living skills assessments tests to foster/probation youth, the social worker/probation officer is responsible for utilizing the test results in the TILP to reflect the needs and goals of the youth.

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**HANDBOOK ENDS HERE**

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- (2) For youth who entered foster care after their 16<sup>th</sup> birthday, the TILP shall be completed prior to the Disposition Hearing.
- (3) The social worker/probation officer shall include the TILP in the youth's case plan when submitting documents to the court for determining services at the disposition hearing and each status review hearing prior to the first permanency planning hearing and each permanency planning hearing pursuant to Welfare and Institutions Code Sections 358(b), 358.1, 366.3, 706.5, 727.2(e)(5), and 727.3.
- (4) Counties may develop a TILP for youth younger than 16 years of age in accordance with a county plan.
- (5) The TILP shall be incorporated into the case plan specified in Section 31-206.37.
- (6) The social worker/probation officer shall use a nationally recognized or departmentally-approved assessment tool to assist the youth in developing the TILP.

**HANDBOOK BEGINS HERE**

- (A) The following are some examples of nationally recognized assessment tools:

Daniel Memorial Institute Independent Living Assessment for Life Skills, Ansel-Casey Skills Assessment, Phillip Roy Life Skills Curriculum, Community College Foundation Life Skills Assessment Pre and Post Questionnaires.

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**HANDBOOK ENDS HERE**

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- (7) When a goal contained within the TILP is employment, the TILP must state that the purpose of employment is to enable the youth to gain knowledge of work skills, and the responsibilities of maintaining employment pursuant to Welfare and Institutions Code Section 11008.15.
  
- (b) The social worker/probation officer shall update the TILP at least annually or more often if requested by the youth to reflect progress, changes in the youth's level of functioning and modifications made to emancipation goals, programs and services identified in the TILP.
  
- (c) The social worker/probation officer shall ensure that the initial TILP and each update is signed and dated by the social worker/probation officer and the youth.
  
- (d) If the youth refuses to cooperate with the social worker/probation officer in the development of the TILP, the social worker/probation officer shall complete the TILP, including the needs and services. This shall include documentation explaining the refusal and reasonable efforts made to obtain the youth's cooperation. In any instance where the youth refuses services, the social worker/probation officer shall again offer services to the youth at least once every six months.
  
- (e) The social worker/probation officer of the county of jurisdiction shall provide a copy of each completed TILP and its updates to the youth and others who are essential to the completion of the TILP goals.
  
- (f) The social worker/probation officer shall use the TILP document available on the Child Welfare Services/ Case Management System (CWS/CMS).
  
- (g) The social worker/probation officer of the county of jurisdiction shall inform youth about the county ILP and encourage them to participate.
  
- (1) When the appropriate ILP services have been identified, participation in ILP must be documented in the youth's TILP.

<b>31-236</b>	<b>TRANSITIONAL INDEPENDENT LIVING PLAN (TILP)</b> (Continued)	<b>31-236</b>
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- (2) The social worker/probation officer of the county of jurisdiction shall, prior to youth's emancipation, ensure that ILP services are provided as identified in the TILP.
- (3) The social worker/probation officer of the county of jurisdiction shall defer ILP enrollment only if the youth is physically or mentally unable to benefit from the program or if the youth declines to participate. Physical or mental deferments shall be determined by the youth's primary care physician or health/mental health care professional. A redetermination of deferment shall be made at least every six months and documented in the TILP.
- (4) The social worker/probation officer of the county of jurisdiction shall provide, as applicable, the necessary records, referrals and documentation to ensure timely and appropriate ILP service provision and meet the goals and services of the TILP as described in Section 31-236.
- (5) The social worker/probation officer of the county of jurisdiction shall ensure that transportation is provided and/or accessible to enable youth to participate in the ILP.
- (6) The social worker/probation officer of the county of jurisdiction shall work with the youth to ensure that they have access to ILP core services.
- (7) The social worker/probation officer shall ensure that participation in ILP is not used as a punishment or reward.
- (h) The social worker/probation officer shall assist the youth to complete the emancipation preparation goals described in the TILP by collaborating with public and private agencies/persons including but not limited to schools, colleges, Workforce Investment Act programs and services, the Department of Education, Mental Health, ILP coordinators, care providers, the Student Aid Commission, the Employment Development Department and One-Stop Career Centers.
- (i) The services described in the TILP shall assist, the youth, as applicable, to attain the following emancipation preparation goals:
  - (1) Education attainment including: literacy skills, high school diploma/GED.
  - (2) Management, budget and financial management skills; knowledge of landlord/tenant issues, self-advocacy skills, and credit issues; and knowledge of preventive health activities (including substance abuse prevention, smoking avoidance, nutrition education, pregnancy prevention).

<b>31-236</b>	<b>TRANSITIONAL INDEPENDENT LIVING PLAN (TILP)</b> (Continued)	<b>31-236</b>
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- (3) Development of a mentoring relationship with a responsible adult.
- (4) Knowledge of how to acquire and receipt of important documents, including but not limited to:
  - (A) A certified birth certificate;
  - (B) A social security card;
  - (C) An identification card and/or driver's license;
  - (D) A proof of citizenship or residency status (for undocumented aliens, preparation and/or receipt of a completed application for Special Immigrant Juvenile Status (SIJ) pursuant to 8 C.F.R. Section 204.11 or other naturalization process);
  - (E) Death certificate(s) of parent or parents;
  - (F) A proof of county dependency status for education aid applications;
  - (G) School records;
  - (H) Immunization records;
  - (I) Medical records;
  - (J) A Health and Education Passport;
  - (K) A work permit;
  - (L) Written information concerning the child's dependency case including: information about the child's family history; the child's placement history;
  - (M) The names, phone numbers and addresses of siblings and other relatives;
  - (N) The procedures for inspecting the documents described under Welfare and Institutions Code Section 827; and
  - (O) Information regarding jurisdiction termination hearings and the potential consequences of a failure to attend.
  - (P) Information and assistance for completing applications to seal juvenile records pursuant to Welfare and Institutions Code Section 781, as needed.

<b>31-236</b>	<b>TRANSITIONAL INDEPENDENT LIVING PLAN (TILP)</b> (Continued)	<b>31-236</b>
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- (5) Receipt of mental health counseling, as appropriate.
- (6) Establishment and maintenance of a bank account including, but not limited to an emancipation savings account.
- (7) College, vocational training program, or other educational or employment program admittance information, prior to emancipation.
- (8) Gainful employment through the provision of information about and participation in employment and training services provided through Workforce Investment Act programs and services, Employment Development Department (EDD) One-Stop Career Centers, and registered at an EDD One-Stop Career Center, including but not limited to: career exploration, work readiness skills, vocational training, employment experience, job placement and retention.
- (9) Receipt/completion of applications for sources of post-emancipation financial support including but not limited to emancipation stipends, Supplemental Security Income (SSI), Transitional Assistance to Needy Families (TANF), Supportive Transitional Emancipation Program (STEP), Transitional Housing Program-Plus (THP-Plus), scholarships and grants, as applicable.
- (10) Referral to appropriate county adult social services agencies, as needed, prior to emancipation.
- (11) Completion of Medi-Cal reapplication, prior to emancipation.
- (12) Acquisition of safe and affordable housing, upon emancipation.
- (j) The social worker/probation officer shall enable the youth to obtain documents identified in the TILP that are necessary to complete the emancipation goals during the first six months of the youth's 16th year or as soon thereafter as is reasonable.
- (k) Social workers/probation officers shall, prior to each withdrawal from the emancipation savings account, include in the TILP their written determination and authorization for the youth to withdraw cash savings necessary for emancipation purposes pursuant to Welfare and Institutions Code Sections 11008.15 and 11155.5.
- (l) If applicable, savings and incentive payments shall be documented in the TILP, and the requirements of Welfare and Institutions Code Sections 11008.15 and 11155.5 shall apply.

31-236 TRANSITIONAL INDEPENDENT LIVING PLAN (TILP)  
(Continued)

31-236

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**HANDBOOK BEGINS HERE**

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- (1) Welfare and Institutions Code Section 11008.15 specifies:

"Notwithstanding Sections 11008.14 and 11267, the department shall exercise the options of disregarding earned income of a dependent child derived from participation in the Job Training Partnership Act of 1982 (P.L. 97-300), a dependent child who is a full-time student pursuant to the Deficit Reduction Act of 1984 (P.L. 97-369), and a dependent child 16 years of age or older who is a participant in the Independent Living Program pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), providing the child's Independent Living Program case plan states that the purpose of the employment is to enable the child to gain knowledge of needed work skills, work habits, and the responsibilities of maintaining employment."

- (2) Welfare and Institutions Code Section 11155.5 specifies:

"(a) In addition to the personal property permitted by other provisions of this part, a child declared a ward or dependent child of the juvenile court, who is age 16 years or older, may retain resources with a combined value of not more than ten thousand dollars (\$10,000), consistent with Section 472(a) of the federal Social Security Act (42 U.S.C. Sec. 672(a)) as contained in the federal Foster Care Independence Act of 1999 (P.L. 106-169) and the child's transitional independent living plan. Any cash savings shall be the child's own money and shall be deposited by the child or on behalf of the child in any bank or savings and loan institution whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The cash savings shall be for the child's use for purposes directly related to emancipation pursuant to Part 6 (commencing with Section 7000) of Division 11 of the Family Code.

"(b) The withdrawal of the savings shall require the written approval of the child's probation officer or social worker and shall be directly related to the goal of emancipation."

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**HANDBOOK ENDS HERE**

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- (m) The social worker/probation officer shall consider placement of eligible youth in the THPP subject to the requirements set forth in Welfare and Institutions Code Section 16522(a).

<b>31-236</b>	<b>TRANSITIONAL INDEPENDENT LIVING PLAN (TILP)</b> (Continued)	<b>31-236</b>
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**HANDBOOK BEGINS HERE**

- (1) Welfare and Institutions Code Section 16522(a) states, in part:
- (a) "The State Department of Social Services shall adopt regulation to govern transitional housing placement programs that provide supervised housing services to persons at least 16 years of age and not more than 18 years of age, except as provided in section 11403, and who meet all of the following conditions;
- "(1) Meet the requirements of section 11401.
- "(2) Are in out-of-home placement under the supervision of the county department of social service or the county probation department.
- "(3) Are participating in, or have successfully completed an independent living program.
- "(4) Any minor at least 16 years of age and not more than 18 years of age, except as provided in Section 11403, who is eligible for AFDC-Foster Care benefits under this chapter and who meets the requirements in Section 16522.2."

**HANDBOOK ENDS HERE**

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NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 358, 366, 391, 706.6, 727.2, 727.3, 10553, 10554, 11155.5, 11403.2, 16501, 16501.2, 16501.5, 16522, et seq., and 18987.6, Welfare and Institutions Code and 42 U.S.C. Sections 672(a), 675, and 677.

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June 21, 2007

# State-Local Working Group Proposal to Improve the Mandate Process

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LEGISLATIVE ANALYST'S OFFICE





## Concerns With Mandate Process

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- ☑ Process takes a long time, posing difficulties for state and local governments.
  - Currently takes over five years from local government “test claim” filing to final action by Commission on State Mandates.
  - During this time, local governments do not receive reimbursements and state liabilities mount.
  - Length of process also complicates state policy review because the Legislature receives a mandate’s cost information years after the debate regarding its imposition has concluded.
  
- ☑ Claiming reimbursement is exceedingly complicated.
  - Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
  - Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or “parameters and guidelines”) typically require local governments to document their actual costs to carry out each element of the mandate.
  - The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller’s Office.
  - Because the commission bases its estimate of a mandate’s costs on initial claims submitted by local governments, the commission’s estimates typically are inaccurate. Over time, local governments increase their ability to comply with the reimbursement methodology and claims increase substantially.



## Working Group Proposal Overview

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- Goals and focus:
  - Simplify and expedite the mandate determination process.
  - Procedural reform, focusing on period between imposition of a mandate and the report of the mandate to the Legislature.
  - Avoid “tilting the scales” to favor state or local interests, or giving greater authority to the administration, Legislature, or local governments.
  
- Includes three alternatives—use of any alternative would require the consent of the local government claimant and Department of Finance.
  
- Proposal is in the form of amendments to AB 1222 (Laird).



## First Change: Amend the Reasonable Reimbursement Methodology Statute

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- Expand the use of unit-based and other simple claiming methodologies by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute.
  
- Greater reliance on simple claiming methodologies would reduce:
  - Local costs to file claims.
  - State costs to process and audit claims.
  - Disputes regarding mandate claims and appeals to the commission regarding State Controller claim reductions. Reducing commission work to hear appeals would give it more time to focus on mandate determinations.



## Second Change: Allow Reimbursement Methodologies to Be Developed Through Negotiations

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- Create a process whereby local governments and the department jointly develop a mandate's reimbursement methodology and estimate its costs.
  
- Department of Finance and claimant responsibilities:
  - Propose a negotiations work plan. Plan must ensure that costs from a representative sample of local claimants are considered.
  - Jointly review local cost data.
  - Develop a reasonable reimbursement methodology. Assess local support. Modify methodology to secure local support. Specify a date when the department and test claimant will reconsider methodology to ensure that it remains useful over time.
  - Use the methodology to provide the Legislature an estimate of its statewide costs.
  
- Commission on State Mandates responsibilities.
  - Review methodology to ensure that parties considered costs from a representative sample of local governments and that the methodology is supported by a wide range of local governments.
  - Review the methodology for general consistency with the underlying Statement of Decision.
  - Adopt the methodology and report statewide costs.
  
- Advantages of negotiated process.
  - Realizes all of the benefits of the reasonable reimbursement methodology approach previously described.
  - Trims at least a year from the current five-year mandate process.



## Third Change: Authorize Fast Track Legislative Mandate Determinations

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- Create a process whereby local governments and the department may jointly propose that a state requirement be declared a “legislatively determined mandate” and propose a reimbursement methodology. The commission would not play a role in this alternative.
  
- Joint Department of Finance and claimant responsibilities:
  - Identify state requirements to propose for legislatively determined mandate.
  - Propose a reimbursement methodology and estimate of statewide costs.
  - Provide Legislature evidence of local support for reimbursement methodology.
  
- Legislature’s alternatives:
  - May adopt proposal, or amend and adopt proposal. Enact a statute declaring the state requirement to be a legislatively determined mandate and specifying the reimbursement methodology. Appropriate required funding.
  - May reject proposal.
  - May repeal, suspend, or modify the mandate.



## Third Change: Authorize Fast Track Legislative Mandate Determinations

*(Continued)*

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Local government options:

- May accept funding provided for mandate. Such an action signifies that the local government accepts the methodology as reimbursement for the funding period (say, five years). During this time, the local government may not file a test claim or accept other reimbursement for this mandate, unless the state does not provide the funding specified in statute. At the end of the funding period, works with the department to update the reimbursement methodology.
- May reject funding and file a test claim with the commission.



Advantages of process.

- Realizes all of the benefits of the reasonable reimbursement methodology approach previously described.
- Resolves mandate claims in about a year, four years less than current process.
- Reduces the commission's caseload, freeing up time for it to focus on other claims.

CONCURRENCE IN SENATE AMENDMENTS  
AB 2856 (Laird)  
As Amended August 17, 2004  
Majority vote

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ASSEMBLY:	(May 17, 2004)	SENATE:	36-0 (August 18,
			2004)
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(vote not relevant)			

Original Committee Reference: L. GOV.

SUMMARY : Revises the procedures for receiving claims and for hearings on claims, as specified, and the definitions of terms related to the procedure and hearings, defines additional terms, abolishes the State Mandates Claim Fund, and deletes the option of paying claims from this fund.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Abolish the State Mandates Claim Fund and delete references to this fund.
- 2) Define "cost savings authorized by the state" as any decreased costs that a local agency or school district realizes as a result of any statute enacted or any executive order adopted that permits or requires the discontinuance of or a reduction in the level of service of an existing program that was mandated before January 1, 1975.
- 3) Define "reasonable reimbursement methodology" as a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
  - a) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner; and,
  - b) For 50% or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.
- 4) Require 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, except that, in cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

- 5) Remove redevelopment agencies and joint powers agencies from the definition of "special district."
- 6) Change the period during which a test claim may be filed from three years to 12 months from the effective date of a statute or executive order, or 12 months from incurring increased costs as a result of a statute or executive order.
- 7) Require that test claims be filed on a form prescribed by the Commission on State Mandates (Commission) that must contain, at a minimum, a signed written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate and includes specified details, along with specified support declarations and materials.
- 8) Repeal existing provisions pertaining to time limits for public hearings on test claims.
- 9) Require the Commission to notify the appropriate policy

committees of the Legislature, the Legislative Analyst, the Department of Finance (DOF), and the Controller within 30 days after hearing and deciding upon a test claim.

- 10) Provide a process for local agencies, school districts, or the state to request that the Commission amend, modify, or supplement reimbursement parameters and guidelines.
- 11) Require the Commission to consult with the affected state agency, the appropriate fiscal and policy committees of the Legislature, the Legislative Analyst, DOF, the Controller, and the claimant to consider a reasonable reimbursement methodology that balances accuracy with simplicity when adopting parameters and guidelines.
- 12) Require the Controller to request assistance from DOF when preparing claiming instructions.
- 13) Require the Controller to complete any audit of a reimbursement

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claim within two years of its commencement.

- 14) Authorize the Controller to conduct a field review of any claim after it has been submitted but before reimbursement occurs.
- 15) Make numerous other technical changes.

AS PASSED BY THE ASSEMBLY , this bill prohibited the Commission from finding a reimbursable state mandate if an appropriation in the Budget Act, or in another bill, provides funding or cost savings towards the reimbursable mandate.

FISCAL EFFECT : Unknown

COMMENTS : This bill is one of a number of bills under consideration this year that reform aspects of reimbursable state mandates policy. This bill addresses the way claims are filed and evaluated. It establishes a basic "reasonable reimbursement methodology" to be used as a formula for reimbursing local agency and school district costs mandated by the state, and requires that, whenever possible, this 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. However, the bill also provides for exceptions to this general rule. The bill also sets forth new procedures for filing test claims and establishing parameters and guidelines, and requires the Controller to complete any audit of a reimbursement claim within two years of its commencement. This bill was substantially amended in the Senate and the Assembly-approved provisions of this bill were deleted. The subject matter of this bill, as amended in the Senate, has not been heard in any policy committee this legislative session.

Analysis Prepared by : J. Stacey Sullivan / L. GOV. / (916)  
319-3958 FN: 0008256

BILL ANALYSIS

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CONCURRENCE IN SENATE AMENDMENTS  
AB 1222 (Laird)  
As Amended September 4, 2007  
Majority vote

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ASSEMBLY:	77-0	(May 29, 2007)	SENATE:	39-0	(September 7,						
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Original Committee Reference: L. GOV.

SUMMARY : Establishes a streamlined alternative state mandate reimbursement process, clarifies an existing reimbursement methodology, and enhances existing claiming requirements for certain mandates.

The Senate amendments :

- 1) Refine the definition of "reasonable reimbursement methodology" (RRM) so that a qualifying formula is based on cost information from a representative sample of eligible claimants and must consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- 2) Add a test claim filed pursuant to the provisions of the legislatively determined mandate to the general definition of test claim.
- 3) Add to the test claim provisions in existing law additional information that would need to be filed if there is a legislatively determined mandate on that same statute or executive order.
- 4) Permit a test claimant and the Department of Finance (DOF), within 30 days of the adoption of a statement of decision on a test claim, to notify the executive director of the Commission on State Mandates (Commission) of their intent to use the alternate process created by this measure to draft negotiated reimbursement methodology that will be based on a reasonable reimbursement methodology in the form of a letter that specifies the date when the test claimant and DOF will provide to the executive director an informational update regarding their progress and the date when the test claimant and DOF

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will submit a plan to ensure costs from a representative sample of eligible local agency or school district claimants are considered.

- 5) Require the plan to include the date the test claimant and DOF will provide the executive director of the Commission an informational update on progress developing the RRM and the date the test claimant and DOF will submit to the executive director the draft RRM and proposed statewide estimate of costs, which must occur within 180 day of the letter of intent.
- 6) Allow up to four extensions to submit the draft for Commission approval.
- 7) Permit a test claimant and DOF to abandon the development of a RRM and continue with the development of parameters and guidelines.
- 8) Require the RRM to have broad support from a wide range of local agencies or school districts.
- 9) Require the claimant and DOF to submit to the Commission the draft negotiated parameters and guidelines, an estimate of the mandate's annual statewide costs and costs for the initial claiming period, and a report that describes the steps the test claimant and DOF undertook to determine the level of local support for the reasonable reimbursement methodology.

later than 60 days before a Commission hearing.

- 10) Require this proposal to include an agreement that the RRM shall be in effect for 5 years, unless a different term is approved by the commission and that at the end of the term, the test claimant and DOF will consider jointly whether amendments to the reimbursement methodology are necessary.
- 11) Provide that the commission shall review the reimbursement methodology to verify that it meets the requirements of Section 17557.1 and reflects broad support from a wide range of local agencies or school districts.
- 12) Require the Commission, if the reimbursement methodology meets the requirements, to approve it, include the statewide estimate of costs shall in its report to the Legislature, and report it to the fiscal and policy committees, the Legislative

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Analyst and DOF within 30 days after adoption.

- 13) Provide that after the approved term, or upon a joint request to review the reimbursement methodology, the approved reimbursement methodology shall expire.
- 14) Authorize DOF and local governments to do one of the following upon the expiration of the approved term:
  - a) Jointly propose amendments, and an estimate of the annual cost;
  - b) Jointly propose no changes; or,
  - c) Notify the Commission that the test claimant will submit proposed parameters and guidelines to replace the approved reimbursement methodology.
- 15) Provide that the Commission shall approve the continuation or amendments to the reimbursement methodology.
- 16) Authorize the Controller to develop claiming instructions for RRM's approved by the Commission or the Legislature.
- 17) Provide for reimbursement for legislatively determined mandates, and authorize the Controller to audit those claims.
- 18) Provide additional detail regarding notice to the Legislature of a proposed legislatively determined mandate and clarification regarding the statute of limitation's tolling period during which the Legislature considers a legislatively determined mandate.
- 19) Provide that the term of a legislatively determined mandate shall be five years, unless another term is provided for in the statute.
- 20) Acknowledge the additional requirements related to mandates subject to Proposition 1A (subdivision (b) of Section 6 of Article XIII B of the California Constitution).
- 21) Provide that upon a legislative determination, the Controller shall prepare claiming instructions.
- 22) Provide the following circumstances under which a test

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claimant may file a test claim on the same statute of executive order as a legislatively determined mandate:

- a) The Legislature amends the reimbursement methodology and the local agency or school district rejects reimbursement;
- b) The term of the legislatively determined mandate has

expired;

- c) The term of the legislatively determined mandate is amended and the local agency or school district rejects reimbursement; and,
- d) The mandate is subject to the requirements of Proposition 1A, and the Legislature fails to meet those requirements.

- 23) Prohibit a local agency or school district from filing a test claim for a mandate where the statute of limitation had expired before the date a legislatively determined mandate is adopted.
- 24) Provide that a legislatively determined mandate determination shall not be binding on the commission.
- 25) Make corresponding and consistent changes to the provision of law regarding the initial payment for newly determined mandates.

EXISTING LAW :

- 1) Requires the state to provide a subvention of funds to reimburse local governments, including school districts, whenever the Legislature or a state agency mandates a new program or higher level of service, with specified exceptions.
- 2) Establishes a procedure for local governmental agencies to file claims for reimbursement of these costs with the Commission that requires the Commission to hear and decide upon each claim for reimbursement and then determine the amount to be subvented for reimbursement and adopt parameters and guidelines for payment of claims.
- 3) Requires the Commission to consult with Department of Finance (DOF), among other state officials, when adopting parameters

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and guidelines for reimbursement.

AS PASSED BY THE ASSEMBLY , this bill:

- 1) Changed the definition of "reasonable reimbursement methodology" so that a qualifying formula for reimbursing local agency and school district costs mandated by the state need only satisfy one of three specified conditions.
- 2) Specified that a formula based on cost information from a representative sample of eligible claimants, information provided by associations of affected local governments, or other projections of local costs will satisfy the requirements for a reasonable reimbursement methodology.
- 3) Defined "legislatively determined mandate" as the provisions of a statute or executive order that the Legislature has declared by statute to be a mandate for which reimbursement is required by Section 6 of Article XIII B of the California Constitution.
- 4) Specified that the statute of limitations requiring local agency and school district test claims to be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later, shall be tolled from the date a joint proposal for a legislatively determined mandate, as defined, is submitted to the Legislature, to the date the joint proposal is enacted in a Budget Act or other bill, or fails to be enacted.
- 5) Made claims made pursuant to legislatively determined mandates subject to the \$1,000 minimum requirement in current law.
- 6) Required that claims pursuant to a legislatively determined mandate shall be filed and paid in the manner prescribed in the Budget Act or other bill.
- 7) Required that a test claim's required written narrative identify the effective date and register number of regulations alleged to contain a mandate.

- 8) Deleted the statutory provision requiring the Commission to amend the parameters and guidelines for the Animal Adoption mandate in a specified manner.

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- 9) Made findings and declaration concerning the desirability of early settlement of mandate claims.
- 10) Declared legislative intent to provide for an orderly process for settling mandate claims in which the parties are in substantial agreement, and affirms that nothing in this measure diminishes the rights of a local government that chooses not to accept reimbursement pursuant to the provisions of this measure.
- 11) Authorized DOF, in consultation with local governments, to seek to have the Legislature determine if local governments are entitled to reimbursement of costs mandated by the state, establish a reimbursement methodology, and appropriate funds for reimbursement.
- 12) Required a joint request to include all of the following:
- a) Identification of the provisions of the statute or executive order alleged to impose a new requirement on local governments, a reimbursement methodology, and a period of reimbursement;
  - b) A list of eligible claimants and a statewide cost estimate for the initial claiming period and annual dollar amount necessary to reimburse local governments for costs mandated by that statute or executive order; and,
  - c) Documentation of significant support among affected local governments for the proposed reimbursement methodology, including, but not limited to, endorsements by statewide associations of affected local governments and letters of approval by a majority of responding affected local governments.
- 13) Permitted a joint request to be submitted to the Legislature at any time after enactment of a statute or issuance of an executive order, regardless of whether a test claim on the same statute or executive order is pending with the commission, and specifies that, if a test claim is pending before the Commission, the period of reimbursement established by that filing shall apply to a joint request filed pursuant to this measure.

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- 14) Required that, if the Legislature determines that the statute or executive order imposes a reimbursable mandate, it shall declare by statute that the requirements of the statute or executive order are a legislatively determined mandate, specify the period of reimbursement and formula or methodology for reimbursing affected local governments, and appropriate funds sufficient for reimbursement in the Budget Act or other bill.
- 15) Permitted the Legislature to amend the reimbursement methodology periodically, upon the recommendation of DOF, a local government, or other interested party, and to repeal, modify, or suspend a legislatively determined mandate.
- 16) Required DOF to notify the Commission of the following specified actions:
- a) Provide the Commission with a copy of a joint request when it is submitted to the Legislature;
  - b) Notify the Commission of the Legislature's action on a

joint request in the Budget Act or of the Legislature's failure to include a joint request in the enacted Budget Act; and,

- c) Provide the Commission with a copy of the final version of a joint request if modifications are made by the Legislature.

17) Permitted the Commission, upon receipt of notice from DOF that a joint request has been submitted to the Legislature on the same statute or executive order as a pending test claim, to stay its proceedings on the pending test claim upon the request of any party.

18) Stated that, upon enactment of a statute declaring a legislatively determined mandate and sufficient appropriation for reimbursement in the Budget Act or other bill pursuant to this section, both of the following shall apply:

- a) The commission shall not be required to adopt a statement of decision, parameters and guidelines or statewide cost estimate on the same statute or executive order unless an affected local government that has rejected the amount of reimbursement files a test claim or takes

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over a withdrawn test claim on the same statute or executive order; and,

- b) Local governments accepting payment of costs mandated by the state shall not be required to submit parameters and guidelines.

19) Stated that, by accepting payment of costs mandated by the state for a legislatively determined mandate, a local government agrees to the following terms and conditions:

- a) Any unpaid reimbursement claims filed with the Controller shall be deemed withdrawn if they are on the same statute or executive order of a legislatively determined mandate and for the same period of reimbursement;
- b) The payment constitutes full reimbursement of its costs for that mandate for the applicable period of reimbursement;
- c) The methodology upon which the payment is calculated is an appropriate reimbursement methodology for the next four fiscal years;
- d) A test claim filed with the Commission on the same statute or executive order as a legislatively determined mandate shall be withdrawn; and,
- e) A new test claim may not be filed on the same statute or executive order as a legislatively determined mandate unless one of the following applies:
- i) The state does not appropriate funds adequate to reimburse local governments based on the reimbursement methodology enacted by the Legislature; or,
- ii) The state fails to make the specified reimbursement payments and does not repeal or suspend the mandate.

20) Permitted any local government that rejects the amount of reimbursement in the legislatively determined mandate to file a test claim with the Commission or take over a withdrawn test claim, and prohibits any mandate reimbursement on this test claim from being received by

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this local government until the Commission process is complete and funds for reimbursement are appropriated.

21) Required DOF to notify local agencies of any statute or executive order, or portion thereof, for which operation of the mandate is suspended because reimbursement is not provided for that fiscal year within 30 days after enactment of the Budget Act.

22) Required DOF to notify school districts of any of five specified statutes or executive orders, or portion thereof, for which reimbursement is not provided for that fiscal year within 30 days after enactment of the Budget Act.

FISCAL EFFECT : According to the Senate Committee on Appropriations, potential savings to the Commission to the extent that alternative processes reduce test claim filings, and absorbable costs to DOF to negotiate RRM with local governments.

COMMENTS : This bill establishes an alternative to the Commission process for determining a mandate by authorizing DOF and local governments to seek a legislatively-determined mandate on statutes and executive orders by jointly developing a proposed amount of reimbursement and submitting the proposal to the Legislature. Such proposals may be submitted whether or not there is a test claim pending before the Commission. The Commission's one-year statute of limitations for filing a test claim would be tolled while the parties are pursuing a legislatively determined mandate. If the Legislature determines that local governments are entitled to be reimbursed by the state for mandated costs, it would adopt a proposed methodology and appropriate funds for the reimbursement or may suspend the operation of that statute or executive order until funds for that reimbursement are appropriated. If the proposal to enact a legislatively-determined mandate fails, DOF would notify the Commission that the proposal failed to be enacted, the Commission would assume jurisdiction if a test claim or statewide cost estimate is pending on the same statutes and executive orders, and, if parameters and guidelines are pending and due for submission by the claimants, the 30-day deadline for submitting parameters and guidelines would begin on the date the Commission notifies the claimants that the proposal failed to be enacted.

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AB 2856 (Laird), Chapter 890, Statutes of 2004, authorized the Commission to adopt a "reasonable reimbursement methodology" with the intent to streamline the documentation and reporting process for mandates. This bill would revise the criteria required to be met for the reasonable reimbursement methodology.

Government Code Section 17553 includes specific requirements claimants must meet when filing a test claim alleging that a new statute, executive order or regulation is a state-mandated program. A detailed explanation of the basis for the claim enables Commission staff to analyze the test claims. However, at times claimants do not specify what version of the regulations they are alleging are the basis for the mandate, making it more difficult to determine what version of regulations must be analyzed. This bill would require claimants, when filing test claims that allege that regulations are mandates, to include the effective date and register number of the regulation they are alleging. The author believes that clarifying filing requirements will make it easier for state agencies to file comments on test claims, and will assist Commission staff in providing comprehensive legal analysis of the test claims.

While the Senate amendments to this bill appear to be extensive, they are the result of ongoing negotiations among the interested parties and constitute refinements, clarifications, and fleshing-out of procedural details within the same policy parameters the bill had when it was passed unanimously by the Assembly on May 29, 2007.

Analysis Prepared by : J. Stacey Sullivan / L. GOV. / (916)  
319-3958









## Background

## LAO Findings

# Realignment Revisited: An Evaluation of the 1991 Experiment In State-County Relations

In 1991, the state enacted a major change in the state and local government relationship, known as realignment. In the areas of mental health, social services, and health, realignment transferred programs from the state to county control, altered program cost-sharing ratios, and provided counties with dedicated tax revenues from the sales tax and vehicle license fee to pay for these changes.

Realignment has been a largely successful experiment in the state-county relationship, but could be improved.

- ❖ In mental health, realignment's reliable funding stream and increased flexibility have allowed counties to develop innovative and less costly approaches to providing services.
- ❖ A lack of data in the health area makes evaluating realignment's impact on these programs difficult.
- ❖ Realignment's complicated system of formulas for allocating new dollars limits counties' incentives to control their program costs.
- ❖ Transfer provisions that allow counties to shift funds among program areas have been used by 22 counties and provide an opportunity for counties to reflect their local preferences.
- ❖ By emphasizing realignment's original goals of efficient fiscal incentives and performance accountability, realignment could serve as a useful model for future program changes in the state-county relationship.

To strengthen realignment, we recommend that the Legislature:

- ❖ Implement a simplified allocation structure for new revenues that relies on a single formula. Counties could spend these new dollars on any realigned program—increasing local flexibility and improving the incentives to control costs.
- ❖ Explore the feasibility of collecting meaningful health data at the state level.
- ❖ Create a realignment reserve to help mitigate the need for program reductions during periods of economic difficulty.

## LAO Recommendations

**Elizabeth G. Hill**  
Legislative Analyst

**February 6, 2001**



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## INTRODUCTION

In 1991, the state enacted a major change in the state and local relationship—known as realignment. In the areas of mental health, social services, and health—realignment shifted program responsibilities from the state to counties, adjusted cost-sharing ratios, and provided counties a dedicated revenue stream to pay for these changes. While there have been other significant changes in the broader state-county relationship since the enactment of realignment, the effects of

realignment over the past decade have not been reviewed in a comprehensive manner.

In this piece, we (1) summarize the major components of realignment, (2) evaluate whether realignment has attained its original goals and its ability to meet current and future needs of the state, and (3) provide recommendations to improve the workings of the state-local relationship in this area.

## BACKGROUND

In 1991, the state faced a multibillion dollar budget problem. Initially responding to Governor Wilson’s proposal to transfer authority over some mental health and health programs to counties, the Legislature considered a number of options to simultaneously reduce the state’s budget shortfall and improve the workings of state-county programs. Ultimately, the Legislature developed a package of realignment legislation that:

- ◆ Transferred several programs from the state to the counties, most significantly certain health and mental health programs.
- ◆ Changed the way state and county costs are shared for social services and health programs.
- ◆ Increased the sales tax and vehicle license fee (VLF) and dedicated these increased revenues for the increased financial obligations of counties.

The specific programs that were transferred and the changes in cost-sharing ratios are summarized in Figure 1 and discussed below.

## REALIGNMENT PRINCIPLES

While closing the budget gap was a top priority at the time, the Legislature also relied on a series of policy principles in implementing the realignment changes, including:

- ◆ ***Dedicated Revenue Stream.*** Whereas a number of the realigned programs previously had relied on annual appropriations of the Legislature, realignment hinged on the dedication of a portion of the sales tax and VLF—outside of the annual budget appropriation process—to selected programs. The intent of realignment was to provide greater funding stability for selected health, mental health, and social services programs. At the same time, the Legislature maintained control of the

allocation of these revenues to reflect legislative priorities. The series of allocation formulas developed by the Legislature are discussed in detail below.

◆ **Increased County Flexibility.** The Legislature hoped to free counties from unnecessary state regulation of programs, provide counties the freedom to expand program eligibility or service levels at their discretion, and foster innovation at the local level.

◆ **Productive Fiscal Incentives.** In the years before realignment, it was clear in some cases that counties operated under fiscal incentives that did not encourage the most cost-effective approaches to providing services. By changing these incentives, the

Legislature aimed to both control costs and encourage counties to provide appropriate levels of service.

Figure 1		
Components of Realignment		
<b>Transferred Programs—State to County</b>		
<b>Mental Health</b>		
<ul style="list-style-type: none"> <li>• Community-based mental health programs</li> <li>• State hospital services for county patients</li> <li>• Institutions for Mental Diseases</li> </ul>		
<b>Public Health</b>		
<ul style="list-style-type: none"> <li>• AB 8 County Health Services</li> <li>• Local Health Services</li> </ul>		
<b>Indigent Health</b>		
<ul style="list-style-type: none"> <li>• Medically Indigent Services Program</li> <li>• County Medical Services Program</li> </ul>		
<b>Local Block Grants</b>		
<ul style="list-style-type: none"> <li>• County Revenue Stabilization Program</li> <li>• County Justice Subvention Program</li> </ul>		
<b>County Cost-Sharing Ratio Changes</b>		<b>State/County Shares Of Nonfederal Program Costs (%)</b>
	<b>Prior Law</b>	<b>Realignment</b>
<b>Health</b>		
• California Children's Services	75/25	50/50
<b>Social Services</b>		
• AFDC—Foster Care (AFDC-FC)	95/5	40/60
• Child Welfare Services	76/24	70/30
• In-Home Supportive Services	97/3	65/35
• County Services Block Grant	84/16	70/30
• Adoption Assistance Program	100/0	75/25
• Greater Avenues for Independence program	100/0	70/30
• AFDC—Family Group and Unemployed Parent (AFDC-FG&U) <sup>a</sup>	89/11	95/5
• County Administration (AFDC-FC, AFDC-FG&U, Food Stamps) <sup>a</sup>	50/50	70/30
<b>Local Revenue Fund</b>		
<ul style="list-style-type: none"> <li>• Sales tax—half-cent</li> <li>• Vehicle License Fee—24.33 percent</li> </ul>		
<sup>a</sup> The AFDC-FG&U program was subsequently replaced by CalWORKs.		



- ◆ **Shift Responsibility to Counties.** In many areas, realignment aimed to shift responsibility over program decisions from the state to counties.
- ◆ **Maintain State Oversight Through Performance Measurement.** While shifting program responsibility to counties, the state wished to maintain a level of oversight over the administration of these programs. The Legislature expressed its desire to move towards oversight that relied more on outcome and performance-based measures and less on fiscal and procedural regulations.
- ◆ **Ability to Alter Historical Allocations.** While the initial allocations to each jurisdiction were based on their level of funding just prior to realignment, the Legislature indicated its desire to equalize some future funding based on such factors as poverty incidence and changes in program caseloads.
- ◆ **Community-Based Mental Health Services.** These services, which are administered by county departments of mental health, include short- and long-term treatment, case management, and other services to seriously mentally ill children and adults.
- ◆ **State Hospital Services for County Patients.** The state hospitals, administered by the state Department of Mental Health (DMH), provide inpatient care to seriously mentally ill persons placed by counties, the courts, and other state departments.
- ◆ **Institutions for Mental Diseases (IMDs).** The IMDs, administered by independent contractors, generally provide short-term nursing level care to the seriously mentally ill.
- ◆ **Assembly Bill 8 County Health Services.** This group of services reflects 1979 legislation (AB 8, Greene), in which counties received state funds for county health services and matched state funds with their own general purpose revenues for the same purpose. The state funding could be used for public health, and inpatient or outpatient medical care at the discretion of each county. Public health activities were broadly defined to include personal health programs, such as immunizations and public health nursing, as well as environmental health programs and administration. Inpatient and outpatient services included but were not limited to indigent medical care.

## PROGRAM TRANSFERS

In 1991, realignment transferred more than \$1.7 billion in state program costs to counties, accompanied by an equivalent amount of realignment revenues. While eliminating state General Fund spending, the state maintained varying degrees of policy control in these areas. These programs, as detailed below, are now funded through realignment dollars and other county sources of funds.

- ◆ **Medically Indigent Services Program (MISP).** The MISP was a state fund source for larger counties to support the cost of medical services for persons not eligible for Medi-Cal and who had no source of payment for their care.
- ◆ **County Medical Services Program (CMSP).** The CMSP provides medical and dental care to low-income, medically indigent adults in smaller counties. These counties contract with the state to administer the program.
- ◆ **Local Health Services (LHS) Program.** The LHS Program provided state public health staff to small rural counties.

In addition, realignment eliminated two block grants that had previously provided funding to counties. The County Justice Subvention Program had provided funding for local juvenile justice programs, and the County Revenue Stabilization Program had provided funding to improve the fiscal condition of smaller counties. At the time of realignment, the value of these block grants totaled \$52 million. Counties received in their place an equal amount of realignment funding that could be used for juvenile justice, health, mental health, or social services programs.

### COST-SHARING RATIO CHANGES

As shown in Figure 1, realignment increased the county share of nonfederal costs for a number of health and social services programs. In two cases, the county share of costs was reduced. These programs are detailed below.

### Increased County Shares

- ◆ **California Children's Services (CCS) Program.** The CCS program provides medical diagnosis, treatment, and therapy to financially eligible children with specific chronic medical conditions.
- ◆ **Aid to Families with Dependent Children (AFDC)-Foster Care.** Children are eligible for foster-care grants if they are living with a foster-care provider under a court order or a voluntary agreement between the child's parent and a county welfare department.
- ◆ **Child Welfare Services (CWS) Program.** The CWS program provides ongoing services to abused and neglected children and children in foster care and their families.
- ◆ **In-Home Supportive Services (IHSS).** The IHSS program provides various services to eligible aged, blind, and disabled persons who are unable to remain safely in their own homes without such services.
- ◆ **County Services Block Grant (CSBG).** The CSBG funds can be used for various social services, including adult protective services and programs to provide information and referrals.
- ◆ **Adoption Assistance Program.** The Adoption Assistance Program provides grants to parents who adopt children with special needs. The grant levels, which vary by age,



conform to foster family home rates until the adopted child is 18 or 21 years of age.

- ◆ **Greater Avenues for Independence (GAIN) Program.** Under the GAIN program—subsequently replaced by the California Work Opportunity and Responsibility to Kids (CalWORKs) program—cash assistance recipients received education and job training services in order to help them find jobs and become financially independent.

#### Reduced County Share

- ◆ **The AFDC-Family Group and Unemployed Parent Program.** The AFDC programs, succeeded by CalWORKs, provided cash grants to families with children whose incomes were not adequate to meet their basic needs.
- ◆ **County Administration.** The federal, state, and county governments share the costs of administering the AFDC (now CalWORKs) and Food Stamps programs.

## REALIGNMENT REVENUES

### Revenue Sources

In order to fund the more than \$2 billion in program transfers and shifts in cost-sharing ratios, the Legislature enacted two tax increases in 1991, with the increased revenues deposited into a state Local Revenue Fund and dedicated to funding the realigned programs. Each county created three program accounts, one each for mental health, social services, and health. Through a complicated

series of accounts and subaccounts at the state level (described below), counties receive deposits into their three accounts for spending on programs in the respective policy areas.

**Sales Tax.** In 1991, the statewide sales tax rate was increased by a half-cent. The half-cent sales tax generated \$1.3 billion in 1991-92 and is expected to generate \$2.4 billion in 2001-02.

**Vehicle License Fee.** The VLF, an annual fee on the ownership of registered vehicles in California, is based on the estimated current value of the vehicle. In 1991, the depreciation schedule upon which the value of vehicles is calculated was changed so that vehicles were assumed to hold more of their value over time. At the time of the tax increase, realignment was dedicated 24.33 percent of total VLF revenues—the expected revenue increase from the change in the depreciation schedule.

In recent years, the Legislature has reduced the VLF tax rate. As of this year, the effective rate is 67.5 percent lower than it was in 1998. The state's General Fund, through a continuous appropriation to local governments outside of the annual budget process, replaces the dollars that were previously paid by vehicle owners. In other words, realignment continues to receive the same amount of dollars from VLF sources as under prior law. The VLF allocations to realignment have grown from \$680 million in 1991-92 to an expected \$1.2 billion in 2001-02.

**The VLF Collections.** In 1993, the authority to collect delinquent VLF revenues was transferred

from the Department of Motor Vehicles to the Franchise Tax Board (FTB) in order to increase the effectiveness of delinquent collections. The first \$14 million collected annually by the FTB is allocated to counties' mental health accounts as part of realignment. The distribution schedule is developed by the State Department of Mental Health in consultation with the California Mental Health Directors Association.

### Jurisdictions Affected

All counties are affected by realignment and receive funding from the two revenue sources. In addition, a few cities also receive realignment funding due to their historical responsibility for some of the realigned programs. Berkeley receives funding for both mental health and health programs. Long Beach and Pasadena receive funding for health programs. The Tri-City area (Claremont, LaVerne, and Pomona) receives funding for mental health programs.

### Allocation of Revenues

The original allocations to each jurisdiction were based on their level of funding in these program areas just prior to realignment. These allocations, as of 1991, were in many cases rooted in historical formulas and spending patterns. For instance, funding for the AB 8 county health programs was based on county spending in the 1970s for such programs. As such, realignment did not represent an overhaul of the historical allocation formulas in these program areas. Instead, the realignment formulas emphasized maintaining the county funding levels in existence at the time of its enactment.

The realignment legislation established a revenue allocation system in which the total amount of revenues received in one year becomes the base level of funding for the following year for each jurisdiction (excluding the VLF delinquent collections allocation). For instance, a county's total realignment allocation in 1997-98 became its base level of revenues for 1998-99. Growth in revenues between the two years was then allocated based on a series of statutory formulas. Thus, a county's base revenues in 1998-99 plus any growth revenues received in that year becomes the base for 1999-00.

Figure 2 (see page 8) illustrates how these revenues are allocated. The allocation of growth revenues is described in more detail below.

**Growth Revenues.** Any amount by which the sales tax and VLF realignment revenues have grown is deposited into a series of state subaccounts, each associated with one of the mental health, social services, or health accounts of each county. Sales tax growth funds are first committed to the:

- ◆ **Caseload Subaccount.** The caseload subaccount (part of the social services account) provides funds to repay counties for the changes in cost-sharing ratios for specified social services programs (and CCS, a health program) implemented as part of realignment. The payments from the caseload subaccount are calculated based on annual changes in caseload costs and made a year in arrears. The



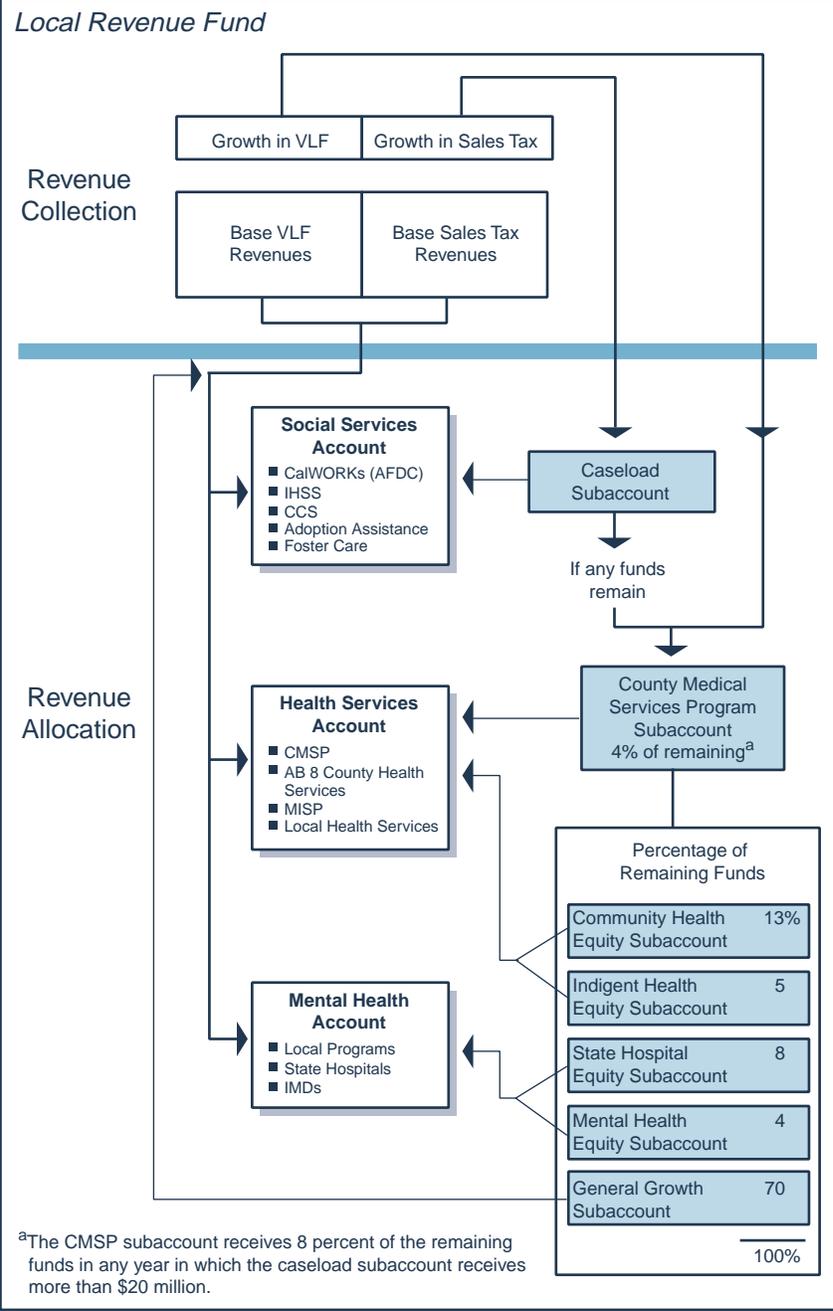
payments to each county are the *net* of all changes in caseload costs when compared to their costs under pre-realignment cost-sharing ratios. In other words, the county payments are adjusted to reflect both cost increases and savings due to caseload changes.

Any remaining sales tax growth funds and *all* VLF growth funds are allocated to the following subaccounts (which then flow back into one of the three main accounts, as noted in parentheses).

- ◆ **County Medical Services Program Subaccount.** The CMSP subaccount (health account) provides funding for health programs to those counties which participate in CMSP.
- ◆ **General Growth Subaccount.** The general growth subaccount (all three accounts) makes its allocations to counties in proportion to their share of state funding for the non-social services caseload realigned programs.

**Figure 2**

**Allocation of Realignment Revenues**



◆ **Equity Subaccounts.** There are four active subaccounts designed to provide payments to those counties below the statewide average in various components of health and mental health funding. The statewide average for equity is defined in statute by a formula based on population and poverty. These equity subaccounts will cease operating within several years when their total lifetime allocations reach \$207.9 million. The four subaccounts are the *Community Health Equity Subaccount* (health account), *Indigent Health Equity Subaccount* (health account), *State Hospital Equity Subaccount* (mental health

account), and *Mental Health Equity Subaccount* (mental health account).

Figure 3 summarizes the specific distributions of revenues in 1998-99, when realignment revenues totaled \$2.9 billion. In that year, the total amount owed the caseload subaccount exceeded the total growth in sales-tax revenues. Consequently, no other subaccount received funding from the sales tax growth in 1998-99, and the remaining 1998-99 caseload obligation is allocated from the 1999-00 sales tax growth. In those years where caseload allocations account for the entire amount of sales tax growth, VLF growth funds are allocated to the subaccounts in the same proportion as the 1996-97 allocations.

Figure 3

**Distribution of Realignment Revenues**

1998-99  
(In Millions)

	Account			Total
	Mental Health	Social Services	Health	
<b>Base Revenues (from 1997-98)</b>	\$888	\$691	\$1,144	<b>\$2,723</b>
<b>Growth Subaccounts</b>				
Caseload		\$96		<b>\$96</b>
CMSP	—	—	\$9	<b>9</b>
Community Health Equity	—	—	11	<b>11</b>
Indigent Health Equity	—	—	5	<b>5</b>
State Hospital Equity	\$6	—	—	<b>6</b>
Mental Health Equity	4	—	—	<b>4</b>
General Growth	25	5	29	<b>59</b>
<b>Totals</b>	<b>\$923</b>	<b>\$792</b>	<b>\$1,197</b>	<b>\$2,912</b>
VLF Collections	\$14	—	—	<b>\$14</b>
<b>Total Revenues</b>	<b>\$937</b>	<b>\$792</b>	<b>\$1,197</b>	<b>\$2,926</b>

Note: Totals may not add due to rounding.

**TRANSFER PROVISIONS**

Although funds are deposited into the three separate accounts in each county, the realignment statute allows for transfers of dollars among these accounts in certain circumstances. These transfers allow counties to adjust program allocations to best meet their service obligations.

Each county is allowed to transfer up to 10 percent of any account's annual allocation to the other two



accounts. In order to take advantage of this provision, the county must document at a public meeting that the decision is being made to ensure the most cost-effective provision of services. Each county may transfer an additional 10 percent *from* the health account *to* the social services account under specified conditions. Each county may also transfer an additional 10 percent *from* the social services account *to* the mental health or health accounts under specified conditions. All transfers apply for only the year in which they are made, with future allocations based on the pre-transfer amounts.

### **“POISON PILL” PROVISIONS**

At the time of the enactment of the realignment statutes, it was unclear whether the legality or constitutionality of any of the components would be challenged. Therefore, a series of “poison pill” provisions were put into place that would make components of realignment inoperative under specified circumstances. These provisions are still active and fall into three types.

***Reimbursable Mandate Claims.*** If, as a result of the realignment provisions, (1) the Commission on State Mandates adopts a statewide cost estimate of more than \$1 million or (2) an appellate court makes a final determination that upholds a reimbursable mandate, the general provisions regarding realignment would become inoperative.

***Constitutional Issues.*** Although local entities receive their realignment VLF allocations as general purpose revenues, the realignment statute requires that each entity must then deposit an equal amount of revenues into their health and mental health accounts. Section 15 of Article XI of the State Constitution requires VLF revenues to be subvended to cities and counties. If a final appellate court decision finds that the realignment provisions related to VLF deposits violate the Constitution, the VLF tax increase from 1991 would be repealed.

Similarly, if a final appellate court decision finds that revenues from the half-cent realignment sales tax are subject to Proposition 98’s education funding guarantee, this portion of the sales tax would be repealed.

***Court Cases Related to Medically Indigent Adults.*** If a final appellate court decision finds that the 1982 legislation that transferred responsibility from the state to counties for providing services to medically indigent adults constitutes a reimbursable state mandate, the VLF increase would be repealed.

If any of these poison pill provisions were to take effect, the affected statute would become inoperative within three months, with the precise timing dependent on the particular provision.

## EVALUATING REALIGNMENT

Below we analyze the impacts of realignment in detail for each of the three areas affected—mental health, social services, and health programs. We have focused upon the major programs and therefore, do not discuss every program funded by realignment. We also discuss several realignment issues which cut across the program areas.

### MENTAL HEALTH PROGRAMS

***The realignment of mental health programs has accomplished most of its original intended purposes. The relative fiscal stability and flexibility that has resulted from the shift of funding and program responsibilities from the state to the counties has encouraged efficiency and innovation while resulting in modest revenue growth. However, significant concerns remain regarding efforts to have the state measure and track the performance of the counties in using the funds.***

As was noted above, the Legislature had a number of programmatic and fiscal goals in enacting the realignment of mental health care programs. Our review of expenditure and caseload data over the last decade and discussions with state and county officials strongly suggests that most of the original intended purposes of realignment have been accomplished.

### Pre-Realignment Concerns

***Mental Health Funding Once Vulnerable.***  
Before the enactment of realignment, state funding for local mental health services was subject to annual legislative appropriation, which could vary

significantly from year to year depending upon the state's financial condition. Because 90 percent of so-called Short-Doyle grant funding for mental health programs generally came from the state (with the remaining 10 percent funded by the counties), local mental health services were particularly vulnerable to reductions when the state was faced with financial shortfalls. In 1990-91, for example, state expenditures for community mental health programs declined by about \$54 million or 8.6 percent below the prior-year's spending level.

At the time that realignment legislation was considered, mental health program experts had voiced concern that the uncertainty created by the annual state appropriations process was harmful to the development of sound community programs. The significant year-to-year swings in funding levels and uncertainty in the state budget process were also said to have discouraged county government officials from making the multiyear commitments needed to develop innovative programs. Before a pioneering new program could be staffed, made operational, and fully developed over several years, a county mental health department was at risk of having to scale back the commitment of funding and personnel for such efforts. The intent of realignment was to provide mental health programs stable and reliable funding through a dedicated revenue source in order to foster better planning and innovation.



**Program Flexibility Was Constrained.** The lack of flexibility provided to counties to use the resources available to them in the most cost-effective and medically effective manner was also a concern at the time realignment was considered. For example, prior to realignment each county was given a set allocation of beds for seriously mentally ill patients receiving a civil commitment to the state mental hospital system under the Lanterman-Petris-Short (LPS) Act. Counties were also allocated state-funded nursing care beds known as Institutions for Mental Diseases (IMDs). A county mental health department did not have the option of using fewer LPS or IMD beds and instead using the money for much less-costly (and in some cases potentially more medically effective) community-based treatment programs. In effect, counties were required to “use or lose” their allocation of LPS or IMD beds even if more cost-effective options were available.

Counties were also concerned that much of the state funding for their mental health systems was in the form of categorical programs, by which specific state grants were restricted for use for programs assisting specific target groups of mentally ill individuals. This categorical funding approach limited the ability of county mental health systems to meet the specific mental health needs of their communities and to combine funding from various programs to coordinate services.

The realignment plan was intended to provide additional flexibility to the counties in their use of state funding. For example, the realignment plan directly allocated to county mental health systems

the funding for LPS beds within the state hospitals and for IMDs. Counties were free to continue to use the funds for the same number of LPS or IMD beds as before. With advance notice to the state, however, they could use fewer beds than previously allocated and use the savings for other components of their community-based programs. The realignment plan also eliminated some categorical community-based mental health programs, including the Community Support System for Homeless Mentally Disabled Persons and the Self-Help for Homeless programs. The counties were free either to continue the programs using realignment funds or to reallocate the funds to other purposes.

**System Accountability Deemed Lacking.** Finally, the enactment of realignment was intended to provide more effective state supervision and oversight of local mental health programs. While the state had long collected fiscal and program activity data about community-based mental health programs, state policymakers had voiced concern that the state had little information about the effectiveness of the county programs it had been funding. For these reasons, the realignment legislation expressed the intent that the state implement an effective data system that would measure such performance outcomes.

### **Results of Mental Health Realignment**

**Funding Stability Did Improve.** The realignment plan adopted by the Legislature and Governor (as shown in Figure 4) addressed concerns over the lack of funding stability for community-based mental health programs by shifting a share

of sales tax and VLF revenues to counties along with the primary fiscal responsibility for operating those programs. Since an initial shortfall caused by the state's recession, the total amount of state revenues redirected to county-run mental health programs under realignment has grown fairly steadily. Mental health realignment funding is anticipated to exceed \$1 billion in the current fiscal year, an increase of more than \$350 million since 1991-92 and an average annual growth rate of 6 percent.

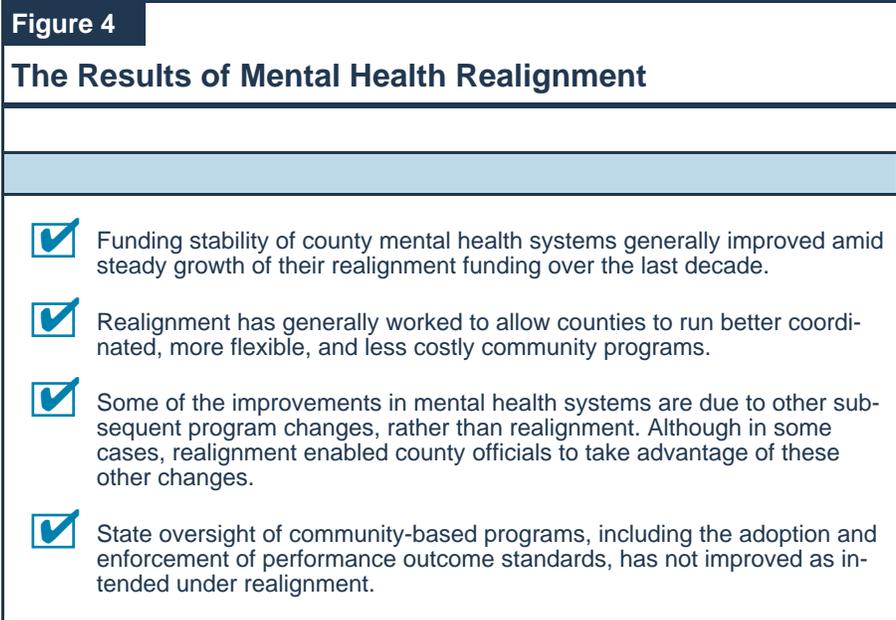
**Improved Program Efficiency and Flexibility.**

The implementation of realignment has generally succeeded in establishing better coordinated, more flexible, and less costly mental health programs in the community. The evidence suggests that counties have been successful in shifting their treatment strategy so that fewer clients receive treatment in costly mental health hospitals and other long-term care facilities and more clients are served with a potentially more effective treatment approach in less costly community-based outpatient and day-treatment programs.

As shown in Figure 5 (see page 14), county LPS placements in state mental hospital beds dropped dramatically after the enactment of realignment—

from about 1,900 in 1992-93 to about 850 today. The number of patients placed in IMDs has also dropped. Before realignment was enacted, almost 3,900 mentally ill persons were in IMD beds at any given time. The DMH recently estimated the IMD population to be about 3,500.

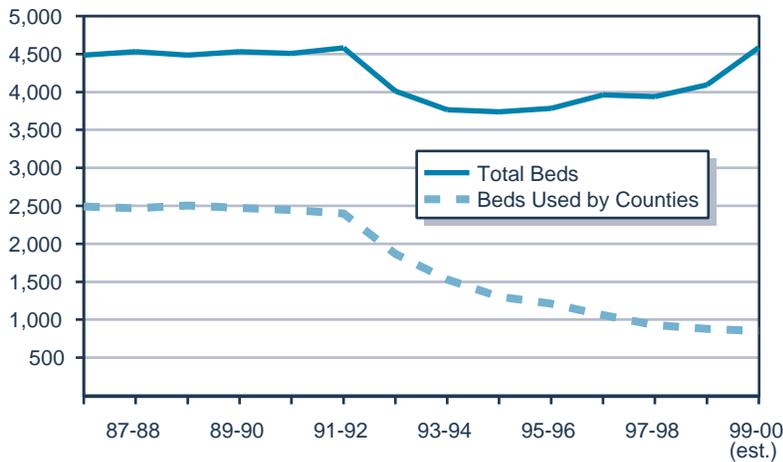
County expenditure reports document that the funds saved by scaling back inpatient care have shifted to outpatient treatment. In 1991-92, when realignment was enacted, county mental health program expenditures for outpatient care were about \$300 million, about 32 percent of their total spending. By 1997-98 (the most recent year for which statewide data is available), \$666 million was being spent on outpatient care, and these expenditures represented 42 percent of their total spending. Realignment funding played a critical role in this expansion of outpatient care. About





**Figure 5**

### Counties Are Using Fewer State Mental Hospital Beds



Source: Governor's budget, Department of Mental Health. Last Wednesday of fiscal year.

\$72 million in realignment funding was used to support outpatient care programs in 1991-92. By 1997-98, this amount had almost quadrupled to \$265 million.

County officials have indicated that the new flexibility they gained under realignment has allowed them to launch experimental community-based programs to better coordinate services for their clients and to establish new types of services that were previously unavailable. Los Angeles County, for example, initiated an effort to coordinate the services its mental health programs provide to adults and children with other social services agencies within targeted neighborhoods. San Diego County established "clubs" for mentally ill clients in the community where they

receive peer counseling and other nontraditional support services. Riverside County created special teams of county staff members to respond to the crises of individual patients in the community and divert them from commitment to expensive inpatient beds. Some of these experimental programs might not have been possible without realignment's elimination of some categorical programs.

***Non-Realignment Policy Changes Have Also Influenced Program Changes.*** These major changes in mental health pro-

grams over the past decade should not be attributed to realignment alone. A number of other significant changes to the structure and finances of county mental health systems have occurred since the enactment of realignment. These include the establishment of a statewide program of managed care for mental health services under the Medi-Cal Program and the resulting consolidation of fee-for-service Medi-Cal services with the county mental health system in each county. In addition, the statewide Medi-Cal plan was amended to allow a broader array of mental health services, including case management, to be reimbursed under the Medi-Cal Program. Other key changes have been the dramatic expansion of mental health services for children under the Early

and Periodic Screening, Diagnosis, and Treatment (EPSDT) program and the commitment of additional state funds to expand services for homeless mentally ill persons.

County officials indicate that, in a number of cases, the availability of realignment funding has enabled them to take full advantage of these other changes in the mental health system to expand their services and caseloads. For example, county officials have indicated that they have used realignment funding to expand rehabilitative services for mentally ill persons who are eligible for Medi-Cal. Because the federal government is obligated to pay for half the cost of Medi-Cal services, counties are in a position to “buy” more mental health services for less money by effectively leveraging the realignment funds available to them.

### What Mental Health Realignment Has Not Changed

**Accountability System Still Needs Improvement.** Implementation of realignment has yet to result in a significant improvement of the state's oversight of the provision of community-based mental health services. Several efforts are progressing to establish new, standardized measures by which to judge the performance and quality of county mental health programs. A committee of state and county officials and mental health program providers appears to be nearing completion of an initial list of agreed-upon performance measures providing data on the cost of services, client and family satisfaction, client retention rates, and other factors. Another committee continues to examine the process by which counties would

be held accountable for their performance. Also, a new statewide computerized Client and Service Information System (CSIS) is coming on-line, providing more up-to-date information on a statewide basis regarding the demographics, diagnoses, and treatment outcomes of mental health clients. As of September 2000, about 49 counties were in compliance with state CSIS data-reporting rules.

However, completion of these efforts is long overdue. The establishment of statewide performance outcome measures was initially to have been completed by 1992-93. More recent legislation requires that measurements of access and quality for mental health care provided in community-based programs be developed by an undetermined date, with a status report to the Legislature by March 2001. Despite the progress made to date, it remains unclear when and if these efforts will lead to an effective statewide system providing rewards for counties with exemplary programs and appropriate consequences for counties that do not meet minimum performance standards.

**Not All Mentally Ill Are Served.** Realignment was intended to help stabilize mental health funding, and also enable some marginal growth in county systems. Realignment, however, was not meant to close the gap in meeting the state's full mental health service needs, and it has not done so. Given recent estimates that 600,000 seriously mentally ill persons annually lack needed mental health services, substantial additional funding might be needed to accomplish such an expansion.



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## SOCIAL SERVICES PROGRAMS

***Realignment increased the county share of nonfederal costs for certain health and social services programs, and reduced the county share for others. These increased shares of costs in a number of programs, paired with limited funds for new cases, were initially intended to create incentives for counties to control costs. However, early legislative changes to the realignment program largely negated realignment's cost control incentives. Although realignment altered the costs shared between the state and counties for cash assistance programs, the changes implemented by welfare reform have overshadowed the impact of realignment in this area.***

### Major Programs Affected

Our analysis focuses on the major social services programs affected by realignment—specifically, foster care, IHSS, and AFDC/CalWORKs. These three programs accounted for 85 percent of realignment's net shift in social services costs in 1991.

***Foster Care.*** Foster care is an entitlement program funded by the federal, state, and local governments. Children are eligible for foster care grants if they are living with a foster care provider under a court order or a voluntary agreement between the child's parent and a county welfare department. The California Department of Social Services (DSS) provides oversight for the county-administered foster care system. County welfare departments make decisions regarding the health and safety of children and have the discretion to place a child in foster care. Following the decision

to remove a child from his or her home, county welfare departments have the discretion to place a child in: (1) a foster family home (basic grant of \$405 to \$569 monthly), (2) a foster family agency home (\$1,467 to \$1,730 monthly), or (3) a group home (\$1,352 to \$5,732 monthly).

***In-Home Supportive Services.*** The IHSS program is currently an entitlement providing various services to eligible aged, blind, and disabled persons. The costs of this program are shared by the federal, state, and county governments. An individual is eligible for IHSS if he or she lives in his or her own home and meets specific criteria related to eligibility for the Supplemental Security Income/State Supplementary Program. Services are intended to serve as an alternative to out-of-home care, but eligibility for the program is not based on an individual's risk of institutionalization. Authorized services include domestic services, nonmedical personal care services, and protective supervision.

The DSS provides oversight for the IHSS program, and county welfare departments make assessments regarding client eligibility, monthly hours of service per case, and duration of services. In addition, counties provide various administrative services related to worker wages, taxes, training, and referrals.

***Cash Assistance.*** At the time of realignment, California's cash assistance program for families with children was known as AFDC. This program, like its successor program—the CalWORKs program—provided cash assistance to families with

incomes inadequate to meet their basic needs. Some families also received welfare-to-work services (such as job search, on-the-job training, and education) through the GAIN program.

### **Changes in Cost-Sharing Ratios Intended to Control Costs**

Prior to realignment in both foster care and IHSS, costs were generally shared by the federal, state, and local governments, with the federal government paying approximately half of total costs. The state paid virtually all of the nonfederal costs for both programs. Although foster care placement decisions and IHSS assessments of client needs were made at the county level, counties at that time assumed little of the fiscal responsibility for these decisions. Under these sharing ratios, counties therefore had little incentive to seek the most cost-effective alternatives within these care systems.

Under realignment, the Legislature significantly increased the county share of nonfederal costs for these programs (from 5 percent to 60 percent for foster care and from 3 percent to 35 percent for IHSS). To pay for any net caseload cost increases as a result of these cost-sharing changes, the original realignment statute provided counties with a fixed amount of dollars from growth revenues.

The apparent purpose of these changes was to establish county incentives to control costs. Both the change in sharing ratios and the fixed amount of growth funds available for new cases were expected to create fiscal pressure on counties to

seek out less expensive alternatives within the programs. If counties exceeded the fixed amount of funds allocated for caseload growth, they were to cover these additional costs from their own revenues.

Examples of less expensive service alternatives within the foster care system could be a shift away from group homes and toward foster family and foster family agency homes, as well as emphasizing both family reunification and adoptions as alternatives to foster care. In addition, the designers of realignment had hoped that increased collaboration and innovation with probation, mental health, and community-based service organizations would reduce foster care placements.

### **Early Statutory Changes Negated Realignment's Cost Control Incentives**

Legislation enacted within two years of the original realignment plan changed a key piece of the realignment funding strategy. While the original realignment statute provided a fixed pool of funds for caseload growth, Chapter 100, Statutes of 1993 (SB 463, Bergeson) provided that *all* net costs incurred by counties due to caseload growth would be backfilled by realignment revenues in a subsequent year. Because this statutory change effectively returned county caseload costs to their pre-realignment cost-sharing ratios, realignment's cost control incentives were negated. This statutory change relieved some fears that the original formula could have exposed the state to mandate claims for the unfunded portion of the entitlements.



We note that after the enactment of Chapter 100, counties still have a very modest incentive to control costs because of cash flow concerns. Specifically, counties must wait at least one year for realignment funds to backfill county costs for caseload cost increases. Thus, to the extent that counties face cash flow difficulties in funding their caseload costs, they would face a modest incentive to control costs.

**Cost Controls Largely Not Achieved.** Given the minimal incentives for counties to control costs, it is not surprising that costs per case since realignment have increased in both foster care and especially IHSS. In foster care, potential savings have not been realized since realignment's enactment and the cost per case has increased slightly after adjusting for inflation. We note that in IHSS a series of non-realignment policy changes that started in the 1990s, and that are expected to impact counties through 2005-06, have added to the total cost of IHSS services.

#### **AFDC: Welfare Reform Changes Overshadow Realignment**

Prior to realignment, costs for AFDC grant payments, program administration, and welfare-to-work services (GAIN) were shared among the federal, state, and local governments. As summarized in Figure 1, realignment changed the nonfederal cost-sharing ratios for the state and county governments, with a net decrease in county costs of about \$210 million in 1991-92.

In response to the 1996 federal welfare reform legislation, the Legislature replaced the AFDC

program with California's own version of welfare reform—the CalWORKs program. This legislation made two changes in the state/county fiscal relationship that benefitted the counties. First, the CalWORKs legislation fixed the county share of costs for administration, employment services, and support services (such as child care) at their 1996-97 dollar levels. Thus, the state now absorbs all of the increased costs (more than \$1 billion in 2000-01) for welfare-to-work services. Second, the state welfare reform legislation created a performance incentive program for the counties. Specifically, all savings attributable to program exits from employment or recipient earnings are paid to the counties as performance incentives. As of 2000-01, the Legislature has appropriated approximately \$1.3 billion for payment of these incentives that must be expended on needy families. Compared to the modest changes in this area made by realignment, welfare reform has provided counties with significant financial benefits.

#### **HEALTH PROGRAMS**

***The realignment of health programs was largely a shift in funding sources—from the state's General Fund to realignment's revenue sources—without significant changes in fiscal incentives or program administration. A lack of data makes evaluating realignment's impact on health programs difficult to gauge, but there do appear to be opportunities for improving counties' flexibility.***

Unlike some programs within the social services and mental health areas, the realignment of health programs was largely not intended to alter fiscal

incentives, establish performance measures, or shift program administration to the counties. According to state and local government officials, the main purpose was to relieve the state General Fund of fiscal pressure. At the time of realignment, MISD and AB 8 services were already being administered by the counties, and realignment did not change the state's role in the administration of CMSP and LHS. Essentially then, realignment substituted fund sources—replacing state General Fund appropriations with realignment's tax increases. At the same time, realignment did make several changes in the areas of data reporting and fiscal flexibility, which we discuss below. The realigned health programs received \$833 million of the original realignment allocations, which had grown to \$1.3 billion in 1999-00.

#### **Lack of Data Makes Evaluation Difficult**

***Realignment Reduced Reporting Requirements.*** Realignment was intended to reduce the reporting requirements for the AB 8 program. Prior to realignment, counties were required to submit to the state an AB 8 Plan and Budget and an Actual Financial Data Report. The Actual Financial Data Reports showed how AB 8 funds were being allocated among public health, inpatient care, and outpatient care within an individual county and contained details of AB 8 budget appropriations, revenues, and the county's share of costs for its programs.

A county's AB 8 Plan and Budget presented detailed descriptions of the affected programs. For example, a county would report its total public

health expenditures, its specific allocation to chronic disease, and which specific diseases were being tracked (such as cancer, diabetes, arthritis, and heart disease). In addition, counties would report their public health staffing levels by type of personnel (such as administrative staff, physicians, nurses, or sanitarians). Pursuant to realignment legislation, counties are no longer required to submit their AB 8 Plans and Budgets to the state. Today's level of reporting does not include the tracking of specific diseases or detailed staffing information.

Much of the previously collected data was helpful at the state level for understanding a particular county's approach to providing health services. Aggregating this data for statewide analysis, however, could only be done manually. As a result, it was difficult for DHS to use the reported data for policy purposes.

***Lack of Data Restricts Statewide Evaluation.*** Our analysis of realignment's impact on health programs indicates that there are data gaps in the realigned health programs. Specifically, there is no state system to collect data regarding each county's (1) total expenditures for indigent care by fund source, or (2) total expenditures by fund source for each major spending category—public health, indigent inpatient care, and indigent outpatient care. The lack of this data leaves the state unable to answer fundamental questions regarding the provision of health services in each county and hampers the state's ability to devise effective health financing policies and budgets.



### **Flexibility Could Be Enhanced**

Realignment appears to have improved county fiscal flexibility in some areas. For example, realignment has provided additional authority to shift resources between AB 8 services and MISP services to the area of greatest need. Specifically, any growth in realignment funding that counties receive can be spent in either the AB 8 service area (public health, inpatient care, or outpatient care) or MISP (indigent care) area.

#### ***Assembly Bill 8 Historical Restrictions Remain.***

Realignment, however, has continued some funding restrictions *within* the allocations for AB 8 services. Prior to realignment, a county had the authority to use state AB 8 General Fund monies within the public health area for (1) those programs that it had selected to fund just prior to the passage of AB 8 in 1979 and (2) any new public health programs that were established subsequent to the passage of AB 8. A county could not, however, use AB 8 funds for any existing public health programs that the county had not funded in the year prior to AB 8. Realignment's preservation of this restriction limits the discretion of counties to shift realignment funds among public health programs, leverage federal funds, implement local cost-saving measures, or reflect current local preferences.

These restrictions have created difficulties for at least one county. Humboldt County officials wanted to use realignment funding for administrative costs associated with public health programs. After the county sought clarification from the state, DHS denied the county the use of realign-

ment funds for this purpose because the county had not used certain funding prior to AB 8 for this purpose. Other counties which did spend their funding on this purpose years ago *would* be eligible to spend their realignment dollars in this manner.

### **CROSCUTTING REALIGNMENT ISSUES**

***Realignment has generally provided counties with a stable and flexible revenue source. Realignment's growth allocation formulas have not, however, created incentives for counties to control their costs. Over time, the social services account has gained a greater share of total realignment dollars, with a corresponding reduction in the shares of funding for health and mental health programs. While these formulas have somewhat reduced allocation inequities, 22 counties remain "under-equity" as defined by realignment law. Realignment's transfer provisions were used by many counties over a five-year period and provided those communities an opportunity to adjust funding allocations in order to reflect local priorities.***

### **Fiscal Incentives Could Be Improved**

As discussed earlier, one of the original goals of realignment was to design a system that, through changes in fiscal incentives, would encourage counties to make more cost-effective and efficient program decisions. In the social services discussion above, however, we highlighted how the passage of Chapter 100 in 1993 effectively restored the pre-realignment cost-sharing ratios for the realigned programs. These pre-realignment ratios generally required only minimal county contributions for new caseload expenditures and,

therefore, counties have little incentive to control their caseload costs, as was the case prior to realignment.

**Growth Allocation Formulas Limit Incentives to Control Costs.** Furthermore, the system of revenue growth allocations provides little benefit to those counties which do reduce their caseload costs. This is because counties are not permitted to retain any realignment caseload savings. Rather, each dollar that a county saves in realignment caseload costs will be distributed among all 58 counties through the remaining growth subaccounts. Therefore, counties have little incentive to seek savings in their caseload costs. This dynamic will likely intensify in the coming years as counties decide whether to increase IHSS program expenditures (due to non-realignment policy changes)—potentially driving up caseload subaccount payments without facing significant fiscal incentives to control their costs.

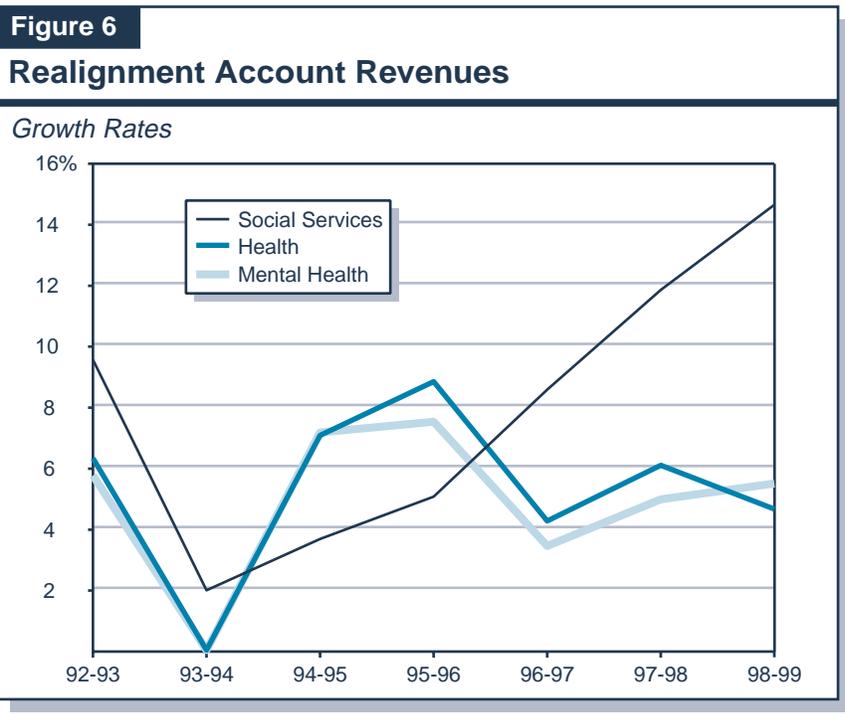
**Revenue Stream Has Been Stable, But Lacks a Reserve**

The combination of the half-cent sales tax and a portion of the VLF has generally provided counties a stable, reliable, and expanding funding source for the realignment portion of the various programs. Overall annual growth rates have exceeded 5 percent during the

past five years. In an economic downturn, realignment program demands would likely rise at the same time that revenue growth would slow. Currently, no mechanism exists within realignment for a funding reserve to assist counties in such a situation. Furthermore, due largely to the property tax shifts of the early 1990s, counties' general purpose revenues have generally eroded over the past decade—leaving most counties with limited access to alternative revenues in such a situation.

**Funding Allocations Have Favored Social Services**

Under the initial realignment allocations, the social services account received 24 percent of total funds, mental health 34 percent, and health 42 percent. In the mid 1990s, as shown in Figure 6, growth rates for both the mental health





and health accounts exceeded the rate for the social services account. However, in more recent years, the social services account has outpaced the other accounts in growth rates—receiving about half of new revenues in 1998-99. The social services account has averaged 10 percent growth since the beginning of realignment, while the health and mental health accounts have averaged 6 percent growth. Consequently, the social services account has, over time, gained a larger share of the total realignment allocations. As shown in Figure 7, by the end of 1998-99, the social services account was receiving 27 percent of total funds, mental health 32 percent, and health 41 percent.

**Figure 7**

**Changes in Account Shares of Realignment Funds**

	Mental Health	Social Services	Health
1991-92	34.0%	23.7%	42.3%
1998-99	32.0	27.1	40.9

This trend reflects realignment’s emphasis on fully funding entitlement programs (all but one are social services programs) as a first priority. The caseload subaccount receives the first allocation from the sales tax growth account. The allocations are based on the difference in caseload costs under realignment and the previous cost-sharing ratios. As this difference has grown in recent years, fewer dollars have been available to allocate to the

mental health and health accounts from the sales tax growth funds. Although the social services account’s share of revenues has increased, counties do maintain the flexibility to transfer these new dollars in the social services account to either of the other accounts. Furthermore, VLF growth dollars are allocated almost exclusively to mental health and health programs.

**Inequities in Allocations Remain**

One of the original goals of realignment was to provide the capacity to address the historical differences in funding allocations among counties and link funding to estimates of a county’s program needs. Since the original allocations were based on each county’s funding levels just prior to realignment’s enactment, counties’ allocations generally reflected a combination of their historical spending, caseloads, and populations of 1991 or even earlier.

Beginning in 1994-95, a portion of realignment growth funds have been dedicated to the four equity subaccounts—community health, indigent health, state hospital, and mental health. A fifth equity subaccount—the special equity subaccount—has completed its payments to its designated recipients and ceased operations. Each of the four remaining equity subaccounts use the same definition of equity (varying only by which jurisdictions provide the respective services). This definition—half based on population and half based on estimated poverty population—sets a statewide average of revenue allocation for each policy area. Jurisdictions below this statewide





## Transfer Provisions Provide Opportunity for Local Preferences

The realignment transfer provisions allow each county the option of shifting up to 10 percent of any of their three account’s annual revenues to another account (and up to 20 percent in some circumstances). These provisions were used by 22 counties during the five-year period from 1993-94 to 1997-98 (the only years for which statewide data is currently available). These counties collectively transferred a total of \$193 million, or 1.6 percent of total realignment allocations during that period.

### ***Social Services Accounts Gain From Transfers.***

The majority of revenue transfers have shifted dollars to social services accounts from health or mental health accounts. Over the five-year period as shown in Figure 9, counties’ social services accounts had a net gain of \$133 million, with nearly two-thirds of this amount coming from counties’ health accounts.

At the time realignment was being considered, some concern was voiced by advocates of mental health programs that funding for such programs might be significantly eroded by the transfer provisions. As shown in Figure 9, these fears have largely proven unfounded. Since 1993-94, mental health programs had a cumulative net reduction of about \$49 million. In other words, about 1 percent of the funding allocated to county mental health programs during that period has been shifted to health and social services programs. Moreover, of that \$49 million, about \$32 million of the shift can be attributed to the actions of just

one county—Los Angeles. In some years, it should be noted, mental health programs received a net gain of several millions of dollars under the transfer provisions.

Because shifts in non-realignment revenues are not reported to the state, the reports of these transfers do not necessarily reflect the entire county story regarding county program priorities. A number of counties, including Los Angeles, have taken advantage of the transfer provisions and later restored at least some of the transferred dollars using non-realignment revenues. Other counties may shift non-realignment dollars to accomplish changes in funding priorities and therefore do not report any use of realignment’s transfer provisions.

At the same time, a number of counties have expressly not used the transfer provisions—citing the desire to avoid contested debates at the local level over which programs deserve additional funding. By maintaining realignment allocations as

**Figure 9**

**Realignment Account Transfers**

*(Dollars in Millions)*

	Mental Health	Social Services	Health	Number of Counties
1993-94	\$3.9	\$5.9	-\$9.8	10
1994-95	-25.9	80.3	-54.4	13
1995-96	2.2	7.9	-10.0	14
1996-97	-18.7	26.7	-8.0	21
1997-98	-10.4	12.6	-2.2	18
<b>Totals</b>	<b>-\$48.9</b>	<b>\$133.3</b>	<b>-\$84.4</b>	<b>22</b>

Note: Amounts may not total due to rounding.

they were received from the state, counties have avoided the controversy that could result from shifting funds away from a particular program.

**Transfers Allow Local Control.** Nonetheless, the transfer provisions represent an important component of local control within realignment's framework. While the realignment formulas reflect statewide decisions on program funding priorities, the transfer provisions allow each county to adjust funding levels to reflect their local priorities. Furthermore, the majority of realignment dollars are allocated on historical formulas even though communities' needs and demands for services may have significantly evolved over time. The transfer provisions allow counties to appropriately modify allocations to reflect these changing needs and demands. Finally, the transfers allow counties to accommodate short-term funding shortfalls in one policy area more easily than might otherwise be possible.

### Concerns Regarding Administration of Allocations

In our conversations with counties, a couple of administrative issues regarding the allocations of funding from the state to counties were raised.

**Unpredictable Level of Revenues.** Given the complicated nature of the allocation formulas, some counties have found it difficult to develop reliable estimates of the funding they should expect from realignment on a monthly and annual basis. As a result, counties have found program planning difficult.

**Delay in Caseload Payments.** Since the payments from the caseload subaccount are calculated as an actual change from the prior year and made a year in arrears, payments for caseload cost increases may not be paid to a county for as many as two or more years after the time the costs were incurred. With rising caseload costs in a number of programs, some counties expressed concerns that they will face cash flow difficulties in covering the current expenses of caseload cost increases.

## RECOMMENDATIONS FOR IMPROVING REALIGNMENT

Our analysis indicates that, after a decade of implementation, realignment can be considered largely successful. Yet, our evaluation highlights a number of areas where improvements could be made. While maintaining its underlying structure, we recommend that the Legislature take the following actions as summarized in Figure 10, (page 26) so that realignment will be better able

to address the challenges and demands of the coming decade.

### Improve Fiscal Incentive Structure Of Growth Allocations

At several points in this analysis, we have noted that realignment preserved the system of programs and revenue allocations as existed in 1991.



With each passing year, the 1991 system of funding allocations and fiscal incentives becomes more disconnected from contemporary needs and preferences. In particular, the retention of pre-realignment cost-sharing ratios in social services programs provides little incentive for counties to control costs in these programs. This, in turn, can affect the funding available for mental health and health programs. In order to promote cost-effective decision making, we believe a county's fiscal decisions in one program area should have a clear impact on its available funds in other areas. This

can perhaps best be achieved by a system which provides each county its new realignment revenues in a separate distribution from other counties. As discussed above, the current system's pool of funds from which all counties compete against each other fails to provide counties an incentive to control caseload costs.

For instance, an improved growth allocation system could allocate all growth funds by a single formula. The ideal formula would provide funds to each county based on the level of demand for realigned programs in that county. For instance,

the current statutory "equity" formula half based on population and half based on poverty population would be one reasonable estimate of county program demands. While maintaining their base level of funds in each of the three program accounts, counties could receive all new growth funds based half on their proportionate share of the state's population and half on their share of the state's poverty population. These funds could be distributed to each county without designating their allocation to the mental health, social services, or health accounts. County

**Figure 10**

### Summary of LAO Realignment Recommendations

- Improve Fiscal Incentive Structure of Growth Allocations**
  - Change growth allocations to single formula to determine each county's new revenues.
- Improve Administration of Fund Allocations**
  - Provide monthly estimates of allocations.
  - Create loan fund to assist with cash flow problems.
- Improve Data in Health Area**
  - Explore feasibility of collecting statewide data.
- Increase County Flexibility**
  - Eliminate unnecessary restriction on use of health funds.
- Create a Reserve Subaccount**
  - Create a fund to mitigate reductions during revenue shortfalls.
- Consider Using Realignment as a Model for Future State-County Program Decisions**
  - Emphasize original realignment goals of productive fiscal incentives and accountability through the measurement of program performance.

officials could then decide which realignment programs had the most pressing needs. This approach would have several advantages over the current funding allocation formulas, including:

- ◆ **Increased Local Control.** Each county would be able to determine its own funding priorities and needs. While a single stream of growth funds would result in local debates over funding for one program versus another (especially across program areas), the existing system already includes this tension both at the local level with transfer decisions and at the state level with the interaction of the caseload subaccount with the other subaccounts.
- ◆ **Cost Control Incentives.** Counties would have an increased incentive to reduce expenditures. Each dollar saved in a program would be available for another program *in that county*, increasing local pressure for innovation and cost savings. Counties would no longer operate under a system in which a competition among counties for funds creates a disincentive for caseload cost controls.
- ◆ **Simple Allocations.** Realignment's complicated growth formulas would be replaced by a single formula which would adjust accordingly to changing demographics.

### Improve Administration of Fund Allocations

Earlier, we noted that counties were concerned with two revenue allocation issues: (1) the lack of

predictable revenue payments and (2) delays in caseload subaccount payments. The simplified growth allocation system proposed above would address both of these concerns. Since a county's share of population and poverty population does not change dramatically from year to year, a county could expect a consistent share of the total projected growth dollars. There would no longer be delayed payments based on caseload changes.

Even within the existing growth allocation system, we believe these administrative concerns could be relatively easy to address. To make the flow of allocations more predictable, the State Controller, in conjunction with the Department of Finance, could provide estimates of monthly allocations at the beginning of the year (similar to the Controller's existing annual shared revenue estimate for gas tax and base VLF revenues). Caseload payment delays and cash flow concerns could be addressed by creating a short-term loan fund. Counties could apply for loan funds based upon a reasonable estimate of future caseload payments. These loan amounts could simply be deducted from future caseload payments. Loan funds could be administered by counties in the same manner as other realignment funds and could be transferred by counties among their three accounts.

### Other Recommendations

**Improve Data in the Health Area.** We were unable to undertake a comprehensive study of realignment's impacts in the health area as a result



of limited data. In order to assist in future decision making for these programs, we recommend exploring the feasibility of collecting meaningful health data at the state level. Specifically, the state should collect annual data regarding county expenditures for public health and indigent care by fund source.

***Increase County Flexibility.*** In our review of health programs, we noted the unnecessary restrictions placed upon counties regarding their use of former AB 8 program funds. In our view, while preserving the intent of the original AB 8 program is a reasonable approach, the spending decisions of a county more than two decades ago is an unnecessarily restrictive standard for determining appropriate spending decisions today. We recommend that the Legislature eliminate these restrictions on county flexibility and explore other

ways to increase program flexibility without a loss of accountability.

***Create a Reserve Subaccount.*** We recommend that the Legislature create a realignment reserve subaccount. The establishment of such a reserve would help mitigate the need for program reductions during periods of economic difficulty. In this regard, the Legislature could create a reserve subaccount either from (1) existing realignment revenue growth (thereby lowering new revenues available for program spending), or (2) a new revenue source, presumably a state General Fund appropriation. When the funds accumulated in the reserve subaccount reached an adequate level, further contributions could cease. If realignment revenues were to stagnate during a recession, the reserve would automatically be allocated to counties to stabilize their program funding.

## CONSIDERING REALIGNMENT AS A MODEL FOR FUTURE PROGRAM DECISIONS

Given a decade of relative success with realignment, we believe its approach to state-county relations can be a useful model for future legislative action in at least three situations, described below.

***Expanding Existing Realignment Services.*** If the Legislature wished to increase the levels of service provided by existing realigned programs, it has several approaches available. For example, it could enact new statutes or specific state General Fund budget appropriations for particular programs.

However, the Legislature may wish to instead consider adding additional resources to the existing realignment revenue streams—with counties choosing which specific programs to fund. Providing counties with additional resources within realignment would provide them with the flexibility to meet their different needs (within the general set of realignment programs). To promote accountability, a county's receipt of any additional realignment funding could be contingent upon its providing data on specific performance outcome

measurements. The state could establish an Internet Web site to publish a “report card” allowing the public to compare the performance of each county with these standards.

***Adding Related Services to Realignment.*** In order to improve flexibility for programs which provide similar services as the realignment programs, the Legislature could consider the transfer of these additional programs to the county level—along with an equivalent amount of a dedicated revenue source—and integrate them into realignment. For example, the local assistance programs of the Department of Alcohol and Drug Programs now supported through annual state General Fund appropriations could be transferred to the counties with revenues equal to their present level of state General Fund dollars (about \$128 million). Likewise, in order to further realignment’s original goal of creating productive fiscal incentives, counties could also receive additional fiscal responsibility for the mental health services provided under the \$563 million EPSDT program. The EPSDT costs have been growing at an average annual rate of 28 percent. County costs for EPSDT

are fixed at about \$120 million, with the additional costs of the program borne by the state and federal governments. Thus, counties currently have no fiscal incentive to attempt to control the rapid growth in EPSDT spending—such as by implementing a rigorous utilization review process.

***Applying the Concept to Non-Realignment Programs.*** Finally, realignment could be used as a model to “realign” state-county programs in another policy area *separate* from the existing realignment structure by using a dedicated revenue stream, local flexibility and authority, and accountability for new or expanded programs. In the past, we have suggested that juvenile justice, adult parole, and substance abuse might be appropriate programs for further realignment. Providing counties additional resources within a specified policy area, if implemented appropriately, could strengthen local control of program decision making, improve program coordination, reduce growth in state administrative costs, and establish clearer lines of accountability for the success of these programs.

## CONCLUSION

The 1991 realignment of mental health, social services, and health programs has been largely a successful experiment in the state-county relationship. In particular, a dedicated revenue stream for the realigned programs has helped to create an environment of fiscal stability which improves

program performance. Moreover, the flexibility granted within realignment has allowed some counties to effectively prioritize their communities’ needs among many competing demands. With some changes, realignment can continue to provide the state an effective way to fund the various mental health, social services, and health programs.







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2011 Realignment:

# Addressing Issues to Promote Its Long-Term Success

MAC TAYLOR • LEGISLATIVE ANALYST • AUGUST 19, 2011



AN LAO REPORT

## EXECUTIVE SUMMARY

As part of the 2011-12 budget plan, the Legislature enacted a major shift—or “realignment”—of state program responsibilities and revenues to local governments. In total, the realignment plan provides \$6.3 billion to local governments (primarily counties) to fund various criminal justice, mental health, and social services programs in 2011-12, and ongoing funds for these programs annually thereafter.

The realignment plan adopted by the Legislature is similar to the one proposed by the Governor, as modified in the May Revision, with respect to the programs shifted and the amount of revenue provided to local governments. However, the adopted realignment package differs in two important respects from the administration’s proposal. First, the Legislature’s plan relies on a shift of existing state and local tax revenues rather than the extension of expiring tax rates as proposed by the Governor. Second, the adopted budget legislation does not include the Governor’s proposal for a constitutional amendment to, among other things, make the funding allocations to local governments permanent and protect the state from potential mandate claims.

In this report, we explain the construction and mechanics of 2011 realignment, as well as identify a few pressing implementation issues that we recommend that the Legislature address before the end of the current legislative session. This report also highlights a series of more extensive program and fiscal issues that we recommend the Legislature address to increase the likelihood of the 2011 realignment plan being a long-term success. (These are summarized in the nearby box.) The specific legislative strategies necessary to address these more extensive issues will be complicated to design because of the number and types of programs being realigned, as well as entail difficult tradeoffs. Therefore, we do not suggest that the Legislature tackle these issues this year. Instead, we recommend that the Legislature use the time remaining during this legislative session to create a fall policy development *process*. Specifically, we recommend that the Legislature create a forum whereby state, legislative, and local stakeholders consider options and develop policy recommendations for the Legislature to consider when it reconvenes in early 2012.

### LAO Recommendations to Promote the Long-Term Success of Realignment

- Develop local funding allocation formulas with eye towards the long-term.
- Simplify the structure of the realignment accounts to provide financial flexibility.
- Enact statutory changes to give counties appropriate program flexibility.
- Make sure that local fiscal incentives are aligned with statewide goals.
- Promote local accountability.
- Clearly define the state’s role and funding responsibilities.
- Avoid state-reimbursable mandates.

## DEVELOPMENT OF THE REALIGNMENT PACKAGE

**What Is Realignment?** Several times over the last 20 years, the state has achieved significant policy improvements by reviewing state and local government programs and realigning responsibilities to a level of government more likely to achieve good outcomes. In 1991, the Legislature enacted a major realignment of health and social services programs and funding responsibilities. This 1991 realignment plan is ongoing and, in 2011-12, counties will receive over \$4 billion to implement the programs that previously were state funding responsibilities. During years of fiscal difficulty, realignment proposals by the Legislature or administration often have included additional revenues earmarked for the transferred programs. In this way, realignment proposals have been viewed, in part, as budget solutions. (The nearby box on page 6 provides more information about the 1991 realignment.)

**Realignment Proposed by Governor.** In January, the Governor proposed a state-local program realignment as part of his 2011-12 budget. This initial proposal assumed a total of \$5.9 billion in revenue from extending the 1-cent increase in the state sales tax and 0.5 percent increase in the vehicle license fee (VLF) rates. Both of these rates had been increased temporarily as part of the 2009-10 budget package and were set to expire July 1, 2011. The Governor's proposal also included the one-time use of \$861 million from the Mental Health Services Fund. The January budget proposal assumed that, effective July 1, 2011, the total of \$6.8 billion in revenues would fund realignment of various public safety, mental health, health, and social services programs from state to local (primarily county) responsibility. The Governor's original proposal also assumed passage

of a constitutional amendment which, if ratified by voters, would have extended the tax increases for five years and dedicated the revenue to local governments for realignment, as well as provided the state with protection from mandate claims made by local governments for costs associated with the realigned programs. (As we discuss later in this report, the California Constitution generally requires the state to reimburse local governments if it "mandates" that they provide a new program or a higher level of service.)

**Realignment Package Modified Several Times.** The administration modified its original realignment proposal in February and as part of the May Revision. These modifications included technical changes to the administration's estimates of program costs, as well as changes to the programs included in realignment. Figure 1 shows some of the major elements of the realignment package at various stages.

**Final Realignment Package Approved in Two Phases.** In March, the Legislature passed two bills related to the realignment of certain corrections and mental health programs and funding. However, the Legislature did not approve the proposed constitutional amendment that provided funding for the realignment package. In June, the Legislature passed Chapter 40, Statutes of 2011 (AB 118, Committee on Budget) and Chapter 35, Statutes of 2011 (SB 89, Committee on Budget and Fiscal Review), which provided the revenues for realignment and created the account structure to allocate the realignment resources. At that time, the Legislature also approved several other budget trailer bills related to realignment. Figure 2 lists the budget trailer bills related to realignment.

**Figure 1**

**Major Elements of the Realignment Plan at Different Stages**

	Governor's Proposals			Adopted Budget
	January	February	May	June <sup>a</sup>
<b>Total Revenues in 2011-12</b>	\$6.8 billion	\$6.8 billion	\$6.4 billion	\$6.3 billion
<b>Revenue Sources</b>	<ul style="list-style-type: none"> <li>Extend 1 percent sales and 0.5 percent VLF rate increases</li> <li>Proposition 63 transfer</li> </ul>	Same as January	Same as January, except: <ul style="list-style-type: none"> <li>0.4 percent VLF rate increase</li> </ul>	<ul style="list-style-type: none"> <li>Shift 1.0625 percent sales tax and \$453 million VLF revenues</li> <li>Proposition 63 transfer</li> </ul>
<b>Realigned Programs</b>	<ul style="list-style-type: none"> <li>Fire</li> <li>Court security</li> <li>Public safety grants</li> <li>Low-level offenders and parolees</li> <li>Expanded juvenile justice</li> <li>EPSDT</li> <li>MHMC</li> <li>AB 3632<sup>b</sup></li> <li>Community mental health/CalWORKs</li> <li>Substance abuse treatment</li> <li>Foster care and child welfare</li> <li>Adult protective services</li> </ul>	Same as January, adding: <ul style="list-style-type: none"> <li>State penalty funds</li> <li>Pre-2011 juvenile justice realignment</li> <li>Public safety mandates</li> </ul>	Same as February, subtracting: <ul style="list-style-type: none"> <li>Fire</li> <li>AB 3632</li> <li>State penalty funds</li> <li>Public safety mandates</li> </ul>	Same as May, subtracting: <ul style="list-style-type: none"> <li>Expanded juvenile justice</li> </ul>
<b>Constitutional Amendment</b>	Yes	Yes	Yes	No

<sup>a</sup> Some of the budget trailer bills related to realignment were adopted in March.

<sup>b</sup> AB 3632 refers to education-related mental health programs.

VLF = vehicle license fee; EPSDT = Early and Periodic Screening, Diagnosis, and Treatment; MHMC = Mental Health Managed Care.

**Figure 2**

**List of 2011 Realignment Trailer Bills**

Bill Number	Chapter Number	Legislative Approval	Subject
AB 100	5	March 17	Mental health
AB 109	15	March 17	Criminal justice
SB 89	35	June 28	Vehicle license fee and registration fee
SB 92	36	June 28	Criminal justice – Board of State and Community Corrections
AB 117	39	June 28	Criminal justice (clean-up legislation)
AB 118	40	June 28	Sales tax, Local Revenue Fund 2011, and account structure
AB 114	43	June 28	Education

## ARCHITECTURE OF 2011 REALIGNMENT

The 2011 realignment plan shifts the responsibility and funding for a series of major programs from the state to local level. The plan allocates the realignment funding to local governments pursuant to a complicated series of accounts and subaccounts. In this section, we describe the fiscal architecture of 2011 realignment, including the funds provided to local governments, the division of these funds among programs, and the plan's fiscal effect on the state.

### Realigned Programs

The realignment package includes \$6.3 billion in 2011-12 for court security, adult offenders and parolees, public safety grants, mental health services, substance abuse treatment, child welfare programs, adult protective services, and California Work Opportunity and Responsibility to Kids (CalWORKs). Except for the funding for the realignment of adult offender and parolee

### Comparing 2011 and 1991 Realignments

The realignment package adopted by the Legislature in 2011 is by no means the first significant realignment of state and local programs. For example, the Legislature has previously realigned responsibilities for juvenile offender populations, trial courts, and mental health services. The previous realignment most akin to the 2011 realignment in size and scope is the one implemented in 1991. As is the case with the 2011 realignment, the 1991 realignment was enacted, in part, because of a multibillion-dollar state fiscal shortfall. The 1991 realignment provided counties with dedicated tax revenues to fund the realignment of various mental health, social services, and health programs, including altering cost-sharing ratios. In both realignments, statutes created a complicated series of accounts and subaccounts into which revenues were deposited. Similarly, both realignment plans deposit their revenues into a dedicated local fund and do not count them towards the Proposition 98 minimum guarantee.

While similar, the 2011 and 1991 realignments have notable differences. By including criminal justice programs, the 2011 realignment includes a broader scope of government programs. The 1991 realignment was also smaller in size, realigning about \$2 billion of program responsibility (about \$4 billion in today's dollars). In 1991, the state provided counties with *new* tax revenues—increases of a half-cent sales tax and a change in the depreciation schedule for vehicles resulting in an estimated 24.33 percent increase the vehicle license fee—rather than shifting existing state revenues.

Because of their similarities, we believe that the 1991 realignment can provide some valuable lessons for the state and counties as they implement 2011 realignment. For example, in our 2001 publication *Realignment Revisited: An Evaluation of the 1991 Experiment In State-County Relations*, we found that realignment had been largely successful because of its reliable funding stream for counties, increased flexibility, and incentives for innovation and less costly approaches to providing services. However, we also found that some aspects of the 1991 realignment—lack of data and a complicated system of allocation formulas, in particular—reduced the overall effectiveness of the realignment. (To find this 2001 report, go to [www.lao.ca.gov/2001/realignment/020601\\_realignment.html](http://www.lao.ca.gov/2001/realignment/020601_realignment.html).)

populations, which goes into effect October 1, all programs were realigned effective July 1. Figure 3 displays the amounts dedicated to each of the realigned programs in 2011-12. (We provide detailed descriptions of the realigned programs and their realignment funding allocations in the Appendix of this report.)

**Realignment Revenues**

Unlike the Governor’s realignment proposal, the realignment package adopted by the Legislature does not extend the temporary sales and VLF tax rate increases that expired at the end of 2010-11. Instead, the budget reallocates \$5.6 billion of state sales tax and state and local VLF revenues for purposes of realignment in 2011-12. Specifically, the Legislature approved the diversion of 1.0625 cents of the state’s sales tax rate to counties. This diversion is projected to generate \$5.1 billion for realignment in 2011-12, growing to \$6.4 billion in 2014-15 (see Figure 4). In addition, the realignment plan redirects an estimated \$453 million from the base 0.65 percent VLF rate for local law enforcement grant programs. Under prior law, these VLF revenues were allocated to the Department of Motor Vehicles (DMV) (\$300 million) for administrative purposes and to cities and Orange County (\$153 million) for general purposes. The budget increases the motor vehicle registration fee by \$12 per automobile to offset the lost revenue

**Figure 3**  
**Expenditures for 2011 Realignment**

*(In Millions)*

Adult offenders and parolees	\$1,587
Local public safety grant programs	490
Court security	496
Pre-2011 juvenile justice realignment	97
Early and Periodic Screening, Diagnosis, and Treatment	579
Mental Health Managed Care	184
Drug and alcohol programs—substance abuse treatment	184
Foster Care and Child Welfare Services	1,567
Adult Protective Services	55
CalWORKs/mental health transfer	1,084
CalWORKs	(1,066)
Mental health	(18)
<b>Total</b>	<b>\$6,322</b>

to DMV. The budget also shifts \$763 million on a one-time basis in 2011-12 from the Mental Health Services Fund (established by Proposition 63 in November 2004) for support of the Early and Periodic Screening, Diagnosis, and Treatment Program and Mental Health Managed Care program.

**Account Structure for 2011 Realignment**

The revenues provided for realignment are deposited into a new fund, the Local Revenue Fund 2011. The budget package creates eight separate accounts and 12 subaccounts within this fund to pay for the realigned programs. One of the accounts, the Mental Health Account, is somewhat different than the other accounts because its funds support the CalWORKs program and interact

**Figure 4**  
**Revenues for Realignment**

*(In Millions)*

	2011-12	2012-13	2013-14	2014-15
Sales tax	\$5,106	\$5,571	\$6,015	\$6,388
Vehicle license fee	453	453	453	453
Proposition 63	763	—	—	—
<b>Revenues</b>	<b>\$6,322</b>	<b>\$6,025</b>	<b>\$6,468</b>	<b>\$6,841</b>

with accounts created under the 1991 realignment plan. Another account created in the Local Revenue Fund 2011 is the Reserve Account, where revenues generated in excess of the amounts projected for some accounts are deposited. The budget legislation requires revenue deposited into the Reserve Account to be used to reimburse counties for programs paid from the Foster Care, Drug Medi-Cal, and Adoption Assistance Program Subaccounts. In addition, for 2011-12, the budget assumes that about \$1.2 billion of the funds deposited into the Local Revenue Fund 2011 will be used to reimburse the state for costs associated with incarcerating and supervising inmates and parolees who were convicted prior to the implementation of realignment and, therefore, will not be realigned to local responsibility. Figure 5 illustrates the Local Revenue Fund 2011 and its accounts and subaccounts.

### **Allocation of Realignment Funds**

The budget legislation establishes various formulas to determine how much revenue is deposited into each account and subaccount. Several of these accounts and subaccounts have annual caps on how much funding they can receive. The budget package limits the use of funds deposited into each account and subaccount to the specific programmatic purpose of the account or subaccount. The budget does not contain any provisions allowing local governments flexibility to shift funds among these programs. The budget legislation also contains some formulas and general direction to determine how the funding would be allocated among local governments. The budget legislation does not specify program allocations among the various accounts and subaccounts, or among counties, for 2012-13 and beyond (except for the CalWORKs/mental health transfer, which appears to be ongoing). It does, however, include legislative intent language specifying that (1) new allocation formulas be developed for 2012-13 and

subsequent fiscal years, and (2) sufficient protections be put in place to provide ongoing funding and mandate protection for the state and local governments. Despite uncertainty surrounding these ongoing allocations, the revenues deposited into the Local Revenue Fund 2011 for purposes of realignment are ongoing.

### **State Fiscal Effect of Realignment**

*Most of State Fiscal Benefit Stems From Proposition 98 Savings.* The budget assumes that, by depositing the sales tax revenue into a special fund for use by local governments for realignment, these funds are not available for the Legislature to spend for education purposes and thus are not counted as state revenue for purposes of calculating the Proposition 98 minimum funding guarantee. As discussed more fully in the education section of our *2011-12 California Spending Plan* report, this action reduced the Proposition 98 minimum funding guarantee by \$2.1 billion. Budget trailer bill language specifies, however, that the exclusion of these revenues is contingent upon voter approval of a ballot measure providing additional funding for K-12 school districts and community colleges. If no ballot measure is adopted satisfying these requirements, the funds would not be excluded from the Proposition 98 guarantee moving forward and the state would need to repay K-14 education for the loss of \$2.1 billion for the 2011-12 year over a five-year period. The assumption that the realignment revenues are excluded from the calculation of the Proposition 98 minimum funding guarantee is subject to some dispute. We note, for example, that the Attorney General's office has been requested to issue an opinion regarding this matter.

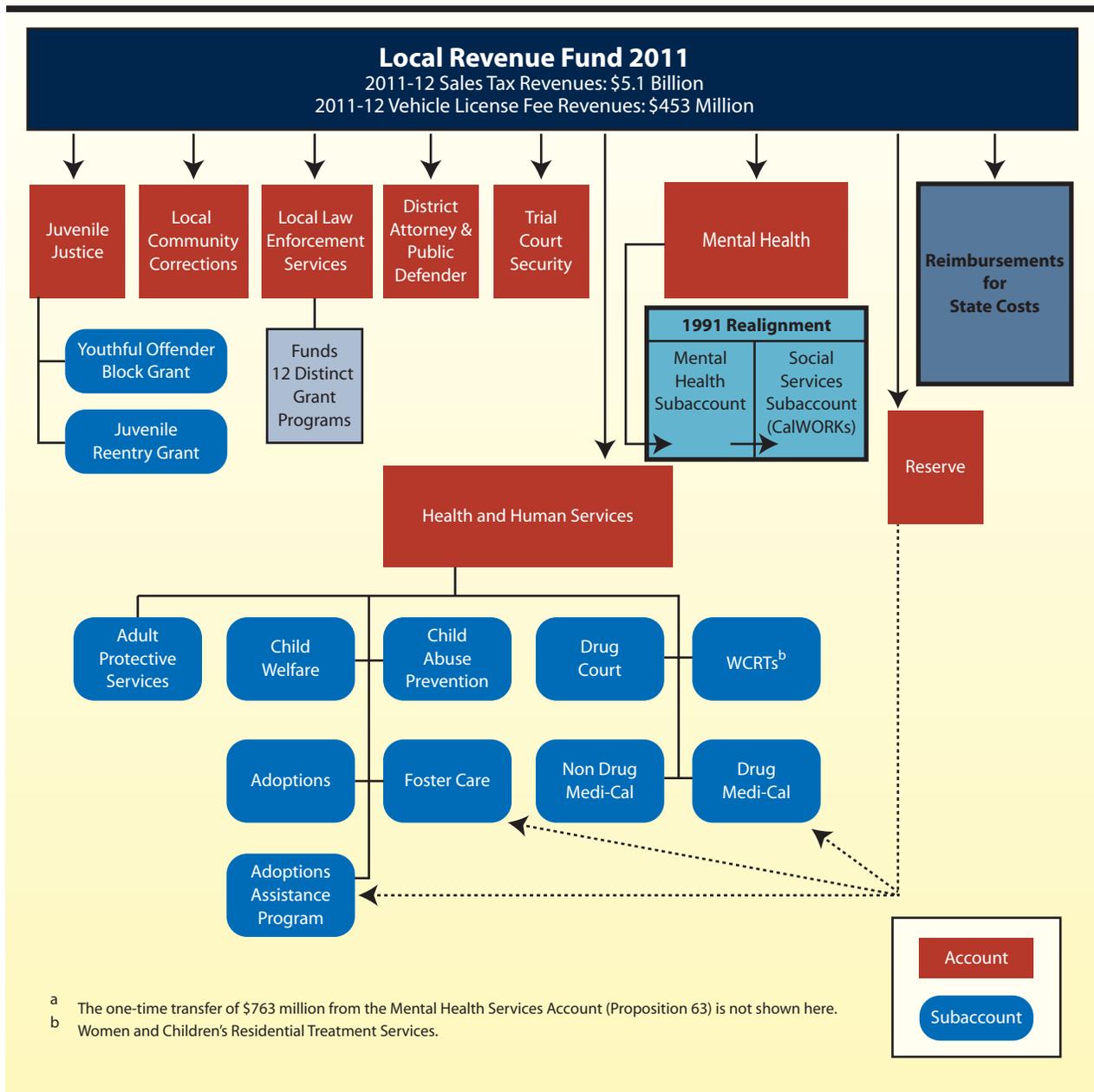
#### *Additional State General Fund Savings.*

In addition to the Proposition 98 savings, the realignment plan achieves state General Fund savings in two other ways. First, using VLF revenue to fund local law enforcement grant programs

reduces the state's costs for these programs by \$453 million. Second, the budget assumes about \$86 million in net savings to the state associated with realignment of lower-level offenders and parolees. Offsetting these savings, however, is \$34 million provided in the budget to support local government hiring, training, and other transition costs associated with implementing this corrections

realignment in 2011-12. In the longer term, however, the realignment of inmate and parolee populations has the potential to significantly reduce cost pressures on the state's prison system, potentially including costs for construction of new prison facilities, as well as achieve a large share of the state inmate population reduction ordered by the federal court.

**Figure 5**  
**Account Structure of the Local Revenue Fund 2011<sup>a</sup>**



## PRESSING IMPLEMENTATION ISSUES TO ADDRESS IN 2011

The 2011 realignment legislation is complex and wide sweeping. To ensure that its changes work as intended, there are a few pressing issues that we believe the Legislature should address before the end of the current legislative session, as well as a series of more extensive issues that the Legislature should consider addressing in early 2012. We discuss the more pressing implementation issues in this section.

### **Allocation of Revenues if Total Funds Are Less Than Expected**

While we believe that the administration's realignment revenue estimates are reasonable, they are estimates subject to change based on various economic factors. Especially given the weakness in the current economy, it would be wise to ensure that revenues are to be allocated in accordance with legislative priorities in the event that revenues do not reach expectations. Based on our reading of the realignment legislation, the first accounts to be funded are the Mental Health Account (which primarily funds CalWORKs) and the Local Law Enforcement Services Account (LLESA). If revenues are lower than anticipated by the end of the year, each program except CalWORKs and the local public safety grants funded by the LLESA will receive its proportionate share of the shortfall based on its share of the Local Revenue Fund 2011 revenues. It is unclear why CalWORKs and the local public safety grants were chosen to be protected in the event that revenues are low. Alternative approaches the Legislature may wish to consider are prorating reductions across all programs, prioritizing program funding differently (for example, by prioritizing entitlement programs), or allowing counties some flexibility to shift money among accounts to address shortfalls based on local priorities.

### **Prioritization of Programs if Total Revenues Are Higher Than Expected**

As described earlier in this report, revenues in excess of those projected are generally deposited into the Reserve Account, which is to be used to fund entitlement programs in the Foster Care, Adoptions Assistance Program, and Drug Medi-Cal Subaccounts. However, it appears that excess revenues would go to these entitlement programs even if those revenues exceeded the costs to provide the programs. It is also worth noting that if revenues are high these entitlement program subaccounts will receive additional funding in two ways, both the transfers from the Reserve Account, as well as getting each subaccount's proportionate share of excess revenues deposited into the Local Revenue Fund 2011. The Legislature may want to consider whether there is another way it would want to prioritize additional revenues.

### **Minimizing Mandate Risk**

Under the California's Constitution, the state generally must reimburse local governments when it mandates that they provide a new program, a higher level of service, or an increased share of cost for a state-local program. Government Code Section 17556 specifies, however, that the state is not required to provide mandate reimbursements if the state provides local agencies with additional revenues "specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

Over the years, the Commission on State Mandates (CSM) has interpreted Section 17556 in a way that often does not give the state credit when the state provides resources to local agencies without directly linking the funds to an identified

mandate. In addition, the voters approved Proposition 22 in 2010, amending the Constitution to prohibit the state from using VLF revenues for mandates.

Given the many shifts in program responsibilities and cost shares in the 2011 realignment package, as well as its reliance on VLF (including VLF revenues shifted from the 1991 realignment plan), the CSM could find that some provisions in the 2011 realignment package constitute state reimbursable mandates. If so, the state would be required to provide additional funds to local governments to reimburse them for these costs.

While addressing this fiscal risk is a complicated task, the Legislature could take some actions to minimize it in the short run. Specifically, we recommend that the Legislature specify that the first use of any 2011 realignment account is to offset any mandated costs imposed on local agencies related to the 2011 realignment legislation. Later in this report, we recommend that the Legislature consider additional actions to minimize its ongoing fiscal risks associated with mandates.

### **Contracting Back With State for Incarceration of Adult Offenders**

Under the realignment plan, counties could contract back with the state to house in state prisons certain adult offenders who otherwise would be realigned to county responsibility. However, at the time of this analysis, how such a process would work remains unclear. While we understand that California Department of Corrections and Rehabilitation (CDCR) is currently working on the administrative details, legislative oversight of the process will be important, particularly given that the state is under a federal court order to reduce prison overcrowding. Given this, the Legislature may want to place an overall cap on the number of beds that counties can purchase in state prison facilities (not including fire camps,

which generally are not part of the federal court order). In addition, the Legislature may want to specify in statute the rate prisons are to charge counties for use of state prison beds to ensure that the state receives reasonable compensation for these additional housing and inmate medical costs.

### **Existing Community Corrections Performance Incentive Grant Program**

In accordance with Chapter 608, Statutes of 2010 (SB 678, Leno), counties currently receive funding based on their success in reducing the percentage of probationers sent to state prison compared to a county-specific baseline percentage of probationers they sent to prison between 2006 and 2008. Our analysis indicates that the realignment of certain adult offenders from the state to counties will “artificially” reduce the future percentage of probationers that counties send to state prison, thereby unintentionally making them eligible for more Chapter 608 funding. This is because the realignment plan will (1) increase the number of individuals on probation and (2) make certain crimes ineligible for prison sentences. In order to account for these impacts, we recommend that the Legislature revise the funding formula specified in Chapter 608. For example, the Legislature could freeze the performance incentive grants at their current levels and, over the next several years, collect data to create a new baseline that reflects the impacts of realignment. While the Legislature probably does not need to correct the Chapter 608 formula before the end of this session, it may want to at least adopt language clarifying that it intends to make such changes. This is because the current formula is based on data for each calendar year, and it might be helpful to counties to provide clarity as to whether the formula is going to change for the 2011 calendar year.

## FURTHER ACTIONS NEEDED TO ENSURE THE LONG-TERM SUCCESS OF 2011 REALIGNMENT

Major measures revamping state and local government responsibilities seldom are fully developed and enacted in a single legislative session. The package of realignment bills enacted by the Legislature earlier this year is not an exception. As acknowledged in the realignment bills themselves, the Legislature has additional work that it needs to do to develop the financial architecture of 2011 realignment, determine the appropriate level of financial and programmatic flexibility to provide counties, and create the right fiscal incentives and accountability mechanisms. Thoughtfully addressing these more extensive and complicated issues will improve the long-term success of the 2011 realignment package.

In this section, we describe our major recommendations for the Legislature to consider as it refines and develops the details of 2011 realignment (see Figure 6). In general, our recommendations do not provide specific solutions to the issues raised. For example, we do not specify exactly what percentage of realignment funds should go to each county for each realigned program. The number, differences, and complexities of the programs included in 2011 realignment make such specific recommendations difficult. Instead, our recommendations should be read as guideposts for

the Legislature as it continues to debate different options. (In fact, at the end of this report, we suggest that the Legislature develop a *process* for developing the long-term implementation details that is inclusive of the many relevant state, legislative, and local stakeholders.) In order to be as useful as possible, we first describe each of our recommendations and then provide specific examples as to how they apply to 2011 realignment.

### Develop Local Funding Allocation Formulas With Eye Towards Long Term

The Legislature will need to determine how revenues will be allocated among counties for each realigned program for 2012-13 and beyond. For 2011-12, the Legislature chose to base county allocations largely upon historical funding allocations. This probably makes sense for the current year, a year of transition. However, over the longer term, it is critical for the success of these programs that allocation formulas *not* be based solely on historical allocations. County financial needs for each program are going to change over time based on changes in county population, caseloads, demographics, wealth, cost of living, and other factors. In the future, county allocations should be based on formulas that are responsive to the

specific factors that affect the funding needs of each program. If, on the other hand, allocation formulas are created that simply institutionalize the funding status quo, some counties eventually will become overfunded and others underfunded

**Figure 6**

### LAO Recommendations to Promote the Long-Term Success of Realignment

- Develop local funding allocation formulas with eye towards the long-term.
- Simplify the structure of the realignment accounts to provide financial flexibility.
- Enact statutory changes to give counties appropriate program flexibility.
- Make sure that local fiscal incentives are aligned with statewide goals.
- Promote local accountability.
- Clearly define the state's role and funding responsibilities.
- Avoid state-reimbursable mandates.

relative to their comparative needs and with no rational policy basis to justify the disparities. If this were allowed to occur, underfunded counties might need to reduce services, seek additional funding from the state, and/or divert funding from other programs. Further, overfunded counties would have less fiscal incentives to control costs and run their programs efficiently. The Legislature and stakeholders may have concerns about adopting new allocation formulas that are significantly different than historical funding patterns. For this reason, it may make sense to phase in any changes so as not to have an adverse effect on any county in any single year.

In addition, the Legislature needs to consider how best to allocate the *growth* in realignment revenues over time, particularly if there are periods where revenue growth exceed program needs. For example, should funding for certain programs be prioritized, or should counties be given flexibility to allocate increased revenues based on local needs and priorities? Should revenue growth be prioritized to programs that have received baseline cuts in recent years, or where the Legislature believes there to be inadequate base funding levels? Should some of the revenue growth be used as an “incentive pot” to support innovative approaches?

In considering this issue, the Legislature should strive to avoid some of the allocation mistakes made in the realignment of mental health and other programs in 1991. In that realignment, allocation formulas were created based largely on historical funding patterns and reflected a combination of each county’s historical spending dating from the mid-1970s and caseloads and populations in 1991. While a share of the growth in the 1991 realignment revenues was dedicated to addressing underlying funding inequities among counties, the inequities were never resolved. The realignment legislation created equity subaccounts designed to provide a share of the revenue growth

to “under-equity” counties based on each county’s population and poverty population. In 1994-95, there were 22 counties that fit the statutory definition of being under-equity counties. While the equity shortfall for these counties was reduced, there were still 22 under-equity counties in 2000-01, the final year of these equity payments.

**2011 Realignment Examples: Local Corrections and Child Welfare.** In determining future allocations for the newly realigned local corrections populations (from state prisons and parole supervision to local jails and community supervision), we recommend that the Legislature consider specifying an allocation formula in statute that is sensitive to future caseload changes at the county level, rather than one that essentially locks in fixed percentages of funding for each county. For example, the Legislature could consider using a formula that weighs heavily factors such as the number of adults ages 18 through 35. This formula could also include other factors such as the number adult felony convictions in each county for the crimes specified in the realignment plan. We believe these types of factors would be more responsive to changes in the populations, demographics, and caseloads that are likely to vary by county and change over time.

As another example, the base funding a county currently receives for Child Welfare Services (CWS) is based on social worker caseload standards established in 1984. There is wide variation in average funding allocations per child among counties. The 2011 realignment legislation calls for CWS funding in 2011-12 to be distributed among counties based on the existing allocation structure. Rather than tying future CWS funding to a county’s historical spending, the Legislature could develop a funding allocation based on broader measures, including factors such as the population of children in a county.

### **Simplify the Structure of the Realignment Accounts/Subaccounts To Provide Financial Flexibility**

As discussed earlier, the 2011-12 budget package requires specific amounts of revenues be deposited into 20 different accounts and subaccounts, with additional allocation formulas dictating the amounts going to a dozen local law enforcement programs. The Legislature should consider simplifying this account structure for 2012-13 and beyond, as well as provide each county with some flexibility to shift funding designated for one program to another program. The current account structure is unnecessarily complicated and could be simplified. This simplification should be achievable without directly affecting the provision of programs. Simplifying the accounting structure for 2011 realignment has the potential to reduce the amount of administrative overhead counties (and the state, potentially) need to provide financial accounting and oversight.

Simplifying the account structure could involve the merger of some accounts and subaccounts. Merging accounts—or, alternatively, providing each county with some level of authority to transfer money among its programs—would permit counties greater flexibility in how they use the revenues provided for 2011 realignment. This could promote greater innovation, as well as allow counties to better respond to local needs and preferences (also discussed below). The specific amount of flexibility would depend on the final account structure created but could be increased or limited by statute. For example, the Legislature could allow counties to shift no more than a specified percentage of funding from one program to others. This may make sense for programs for which the Legislature has significant concerns about county commitment to providing a minimum level of services. In general, however, we recommend the Legislature limit the number of constraints it imposes on county ability to move

funding among programs. The Legislature has given counties responsibility for providing these programs. It is reasonable, therefore, for the Legislature to also give counties the financial authority and flexibility to manage this responsibility.

Fiscal flexibility can be particularly important for counties over the long term. In years in which revenues are down or grow more slowly than anticipated, fiscal flexibility allows counties some ability to respond and focus resources on their highest priorities. Fiscal flexibility can also help counties respond to unique factors that drive up program costs in their communities or offer unusual opportunities for cost savings.

**2011 Realignment Example: Juvenile Justice Grants.** Under the realignment plan, county probation departments and other local agencies receive funding from two different accounts—the Local Law Enforcement Services Account and the Juvenile Justice Account—for five juvenile justice grant programs (shown in Figure 7). These programs are the Youthful Offender Block Grant, the Juvenile Reentry Grant, Juvenile Camps and Ranches Grant, the Juvenile Probation Grant, and the Juvenile Justice and Crime Prevention Act. Specifically, local governments will receive a separate allocation in 2011-12 for each program and must use the funds for the purposes of that program as specified in statutes. Given that these grant programs have overlapping goals and provide similar services, we recommend that the Legislature consolidate the funding for these programs beginning in 2012-13. Such a change would increase local flexibility by allowing local governments to use the funds in ways that meet their unique juvenile justice needs more efficiently and effectively. In addition, reducing the number of program-specific reporting requirements would reduce paperwork and administrative burdens, freeing up resources for more supervision, treatment, and oversight activities designed to achieve improved public safety results.

**Enact Statutory Changes to Give Counties Appropriate Program Flexibility**

For some of the realigned programs, the Legislature will need to make some policy decisions regarding how much *programmatic* flexibility to give counties. The Legislature will need to decide the degree to which counties will be required to operate programs consistent with past practices versus having the authority to provide higher or lower levels of service. Generally, we recommend giving local governments flexibility to encourage innovation and allow for greater responsiveness to local needs and preferences. This flexibility will necessarily be limited where federal requirements are in place. The Legislature may also have concerns that too much flexibility could mean that certain programs are not operated at an adequate level in some counties. In those cases where a minimum level of service is a priority of the Legislature, it can establish minimum standards or requirements. However, we would caution that setting extensive minimum requirements could

reduce local ability to innovate and increase the risk of local governments filing claims for reimbursement of state-mandated costs. Instead, we suggest that the state might achieve better outcomes by focusing on establishing the right fiscal incentives and accountability mechanisms (see discussions below).

Our office found that one of the successes of 1991 realignment was the amount of programmatic flexibility provided to counties for community mental health programs. This flexibility was enhanced because of the more stable stream of dedicated revenues provided to a set of programs that had previously been subject to annual state budget allocations. We found that realignment’s reliable funding stream and increased flexibility allowed counties to develop innovative and less costly approaches to treating mentally ill patients. This included reduced reliance on more expensive mental health hospitals in favor of less costly community-based outpatient and day-treatment programs. Similarly, 2011 realignment has the

**Figure 7**  
**Realigned Juvenile Justice Programs**

(In Millions)

	Population Served	Examples of Services	2011-12 Funding
<b>Local Law Enforcement Services Account</b>			
Juvenile Probation Grant	Children under the supervision of a juvenile court or a probation department, or children at risk of being wards of the court, and their families	Mental health assessments, family mentoring, life skills counseling, gang intervention, and drug and alcohol education	\$151.8
Juvenile Justice Crime Prevention Act	At-risk youth and juvenile offenders and their families	Mental health services, anger management, gang intervention, and drug and alcohol education	107.1
Juvenile Camps and Ranches Grant	Same as the Juvenile Probation Grant program	Same as the Juvenile Probation Grant program	29.4
<b>Juvenile Justice Account</b>			
Youthful Offender Block Grant	Youthful offenders in need of services from probation, mental health, drug and alcohol, and other county departments	Probation, mental health, and drug and alcohol services	93.4
Juvenile Reentry Grant	Individuals paroled from state juvenile detention facilities	Evidence-based supervision and detention practices and rehabilitative services	3.7
<b>Total</b>			<b>\$385.4</b>

potential to foster greater local innovation if counties are provided programmatic flexibility. For example, there appear to be few limitations on how counties choose to manage the newly realigned lower-level offender and parolee populations. This programmatic flexibility, particularly when coupled with the dedicated revenues provided under realignment, should allow local law enforcement agencies to plan for and implement innovative long-term strategies to better manage offenders in the community based on best practices and local needs.

**2011 Realignment Example: Adult Protective Services.** Although current state law requires all California counties to operate an APS program, it is not a federally required program. Therefore, the Legislature has considerable flexibility in determining how to promote the state's overall goals related to elder and dependent adult protection under realignment. For example, the Legislature could make APS a county optional program, but require that counties share information with their communities regarding the safety of elders and dependent adults in their jurisdiction. In doing so, counties would have flexibility to invest in an APS program or spend funds on enhancing other county programs serving elders and dependent adults. In granting this level of flexibility, the Legislature should consider whether it is comfortable with giving counties the ability to decide whether to have an APS program, and whether local residents would have sufficient information to ensure that the county provided needed services to the elderly and dependent adults.

Alternatively, the Legislature could require each county to continue to operate an APS program, but give it significantly more authority to structure the program in a way that works best for the individual county. For example, current law requires county APS programs to investigate allegations of abuse and neglect within certain timeframes. The Legislature could give counties authority to establish timeframes

that differ from the current statutory requirements, provided the county can demonstrate that it meets certain overall standards relating to adult protective services.

### **Make Sure That Local Fiscal Incentives Are Aligned With Statewide Goals**

One frequently cited premise of realignment is that local governments will use their greater fiscal and program authority to improve program outcomes. For this premise to be realized, however, local program funding and authority must be linked in ways that provide inherent fiscal incentives for local governments to operate successful programs. This works in two ways. First, realignment should be structured so that local governments experience fiscal benefits when they successfully and effectively operate the realigned programs. Second, the costs associated with program failures should be borne largely by local governments and not shifted to the state. Similarly, local governments should have fiscal incentives to control costs and operate realigned programs efficiently. The Legislature should strive to structure realigned programs and their funding so as to encourage success, efficiency, and innovation.

**2011 Realignment Example: CalWORKs.** As described in more detail in the Appendix, 2011 realignment provides counties with additional funding for their CalWORKs grant programs through a complicated series of transfers that include 1991 realignment accounts. The outcome of these transfers is that annually each county receives additional funding for their CalWORKs programs. The amount a county receives is the same as the amount the county would have received for mental health services under the 1991 realignment. Prior to 2011 realignment, every county paid the same 2.5 percent fixed share of costs for its CalWORKs program so that a county's costs increased when its program costs increased.

Under 2011 realignment legislation, each county's share of CalWORKs costs varies each year based on its annual program funding from 1991 mental health realignment. Under this funding structure, a county's CalWORKs costs are not affected by its actual caseloads, program costs, or outcomes. Consequently, this approach provides counties with no incentive to control their CalWORKs costs. A better option would be to modify the CalWORKs funding formula so there is a fiscal incentive for counties to manage program costs. The Legislature could direct that any CalWORKs savings be redirected into (1) CalWORKs services and child care, (2) other social services programs within realignment (such as child welfare), and/or (3) any other local priority.

### **Promote Local Accountability**

Establishing useful accountability measures is critical to the long-term success of realignment in several ways. Local program administrators responsible for implementing realigned programs need information to ascertain how effectively and efficiently their agencies are operating programs so as to make decisions on how to improve the programs in subsequent years. In addition, state and local officials will want information regarding the degree to which Realignment 2011 achieves its intended goals, namely improved programmatic outcomes and less costly program delivery. Perhaps most importantly, the general public and their elected officials will expect information on how well local agencies are operating the various realigned programs in order to hold officials accountable.

In establishing program accountability mechanisms for realigned programs, it is important that priority be given to creating reporting requirements and processes that are beneficial to *local* agencies, elected officials, and communities—those ultimately responsible for the local programs—rather than the state. This suggests that local

stakeholders should be involved in the creation of these accountability mechanisms to better ensure the usefulness of the final requirements. Moreover, we suggest that any requirements emphasize *outcome* measures and be made available to the general public—for example, on the county website. In order to ensure that county administrators and state officials can effectively compare program outcomes across counties, the state should ensure the uniformity of any reporting requirements.

For realigned programs, the state's traditional "top down" approach to oversight and accountability may not be the most effective or most responsive to local needs and pressures. Instead, it may be more effective for accountability to be achieved through having the fiscal incentives (rewards and sanctions) for good outcomes, as well as public display of program outcomes for review by the public, local media consumption, and stakeholder groups. For example, there is currently a collaborative venture between the University of California at Berkeley and the California Department of Social Services (DSS) that aggregates statewide child welfare and foster care data into customizable tables that are updated quarterly and made available on a public website. This data source allows those working at the county and state level to examine performance measures over time. It provides policymakers, child welfare workers, and the public with direct access to information on California's entire child welfare system. The program is funded by DSS and the Stuart Foundation.

**2011 Realignment Example: Local Corrections.** As one example, the Legislature could require that counties make available to its citizens key outcome data associated with the realignment of the lower-level offenders and parolees realigned to local community supervision, such as the rate at which these offenders are subsequently rearrested and re-incarcerated for

more serious and violent crimes. Such a process would facilitate local accountability by allowing the community and local leaders in each county to assess how effectively it is supervising and treating the realigned offenders. Counties would also be able to use the data to compare their performance with that of other counties and allow them to identify the successful counties from whom to learn best practices. In order for counties to make those comparisons, though, it would be necessary for the state to ensure that counties are collecting and reporting the data in consistent and uniform ways. Over time, state policymakers could use this statewide data to evaluate the long-term impacts of 2011 realignment on public safety.

### **Clearly Define the State’s Role and Funding Responsibilities**

As local governments take over more responsibility for the operation of realigned programs, the state’s role necessarily diminishes. Even where the state transfers significant program authority to counties, however, the Legislature may still desire that state agencies retain some roles—such as related to program oversight, technical assistance, statewide coordination, and ensuring federal conformity. Defining these specific roles for each state agency is important to ensure that state administrators and their agencies adapt to their new functions and responsibilities. Absent clear legislative direction, it is easy to imagine state agencies being slow to recognize and embrace these new roles. In addition, defining state agencies’ roles is important so that local agencies know what resources are to be provided by—or requirements imposed by—state agencies.

**2011 Realignment Example: Local Corrections.** In adopting the realignment budget package, the Legislature approved legislation to eliminate the Corrections Standards Authority (CSA), an office of CDCR, and assign its former

duties to a new 12-member Board of State and Community Corrections (BSCC) effective July 1, 2012. Unlike CSA, this new board will be independent of CDCR. The primary goals of BSCC are to (1) assist the state and local governments in implementing the realignment of various criminal justice responsibilities, (2) provide leadership in the area of criminal justice policy, and (3) develop data and information related to the implementation of outcome-based measures and evidence-based practices in community corrections efforts. The Legislature may want to provide more specific guidance in statute on how the board should carry out these goals. For example, the Legislature could require the board to compare program outcomes (such as recidivism rates) among counties, as well as formalize a process for identifying and sharing best practices used in successful counties. In the future, BSCC also could be required to aggregate county level data to assess the statewide effect of realigning certain adult offenders on local public safety to assist the Legislature in making subsequent policy decisions.

### **Avoid State-Reimbursable Mandates**

The Constitution provides financial protections to local governments by generally requiring the state to reimburse them for the cost of mandated new programs, increased program responsibilities, and increased shares of costs for state-local programs. As discussed earlier in this report, it is possible that—absent additional legislative action or constitutional change—some of the changes in 2011 realignment could be considered a “state-reimbursable mandate.” In general, we recommend the Legislature avoid funding programs as mandates because the reimbursement process gives the state little ability to control program costs, is unduly bureaucratic, and tends to result in some local governments receiving disproportionately higher funding levels than others.

The clearest way to ensure that the 2011 realignment package does not result in state-reimbursable mandates would be for the state to pass a constitutional amendment similar to the one proposed by the Governor. That measure excluded the 2011 realignment program changes from the reimbursement requirement. Absent a constitutional change (a possibility that we discuss in the nearby box), the Legislature will need to carefully

examine each program to minimize the chance that 2011 realignment could be viewed as imposing a state-reimbursable mandate. Specifically, the Legislature will need to ensure that (1) each county and city receives sufficient funds each year (from a revenue source that may be used to pay for mandates) to offset the cost of any mandated element of the 2011 realignment package and that (2) these funds are explicitly identified as intended

### **What Happens Without a Constitutional Amendment?**

The administration has stated its intent to seek a constitutional amendment similar to what was proposed and considered by the Legislature in February. The details of such an amendment have not been publicly released, and it is unclear if the amendment would be sent to the voters by the Legislature (requiring a two-thirds supermajority vote of both houses of the Legislature) or through the initiative process.

The major features of the February constitutional amendment were the approval of tax rate increases, the dedication of those tax revenues to local governments for the purpose of funding realigned programs, protection of those revenues from being diverted by the state, declaration that realignment revenues did not count towards the Proposition 98 minimum guarantee, a state-local risk-sharing formula to address unanticipated costs associated with lawsuits or new federal requirements, and state protection from local mandate claims associated with realigned programs.

If it contained similar provisions, adoption of a constitutional amendment would provide local governments an increased level of certainty and provide the state with protection from new costs. What happens, however, if no constitutional amendment is adopted—either because the proposal does not reach voters or because voters reject it? Based on our understanding of how realignment currently is constructed, all the program realignments would continue, including the statutory policy changes related to the supervision of lower-level offenders and parolees. The diversion of the state's sales tax and the vehicle license fee funding to the Local Revenue Fund 2011 also would continue. While counties would not have constitutional protection from the state diverting their realignment revenues in the future, the constitution's existing mandate provisions would offer counties some level of financial protection.

The state, on the other hand, would bear some risk that a local government that experienced higher program costs than it received in earmarked program revenues might file a successful claim for mandate reimbursements. Given this risk, the Legislature should explore a range of options to reduce the likelihood that part of the package could be determined to be a state-reimbursable mandate. In the 1991 realignment, for example, the Legislature created a series of "poison pills" to reduce the likelihood of a local government filing a mandate claim. While enacting a similar approach for the 2011 realignment would be difficult, it merits legislative consideration.

by the Legislature to be available to pay for these costs.

Counties will likely be concerned that stringent state mandate protections may leave them vulnerable to increased costs associated with unanticipated events, such as lawsuits, changes in federal law, or federal performance review penalties. For this reason the Governor's proposed constitutional amendment also included a provision that required the state and counties to share in these increased costs equally should they occur. The Legislature may wish to consider similar language.

***2011 Realignment Example: Child Welfare.***

Under prior law, the state and counties shared the nonfederal costs of CWS and Foster Care.

Under realignment, counties pay for 100 percent of the nonfederal share of most child welfare costs. Without a constitutional amendment or other changes, counties could seek mandate reimbursement to the extent realignment revenues were less than the actual costs to provide these programs. This could happen either if the revenues provided to the child welfare subaccounts are lower than projected or if caseloads or other costs are higher than expected. Absent changes that would protect the state from county mandate claims, not only could state General Fund costs increase, but there would also be less incentive for counties to try to manage their child welfare programs efficiently within their resources.

## LONG-TERM DECISIONS NEED A THOUGHTFUL PROCESS

We believe that addressing the longer-term issues outlined in this report—such as determining ongoing allocation formulas, establishing accountability mechanisms, and avoiding mandates—are critical to the long-term success of this realignment. If the Legislature and administration address these issues in a thoughtful way, with a long-term vision, there is a greater chance that realignment could result in significant benefits for the state and local governments, including improvements in program outcomes and more efficient delivery of services.

For this reason, we believe the Legislature should use the interim period in the fall of 2011 to establish a thoughtful *process* for considering how best to address the long-term implementation issues outlined in this report. This process should be designed to include the active participation of not only the Legislature, but also the administration, county and city representatives, local program administrators, and local stakeholders.

The objective of the process should be for these participants to reach consensus on how to address these longer-term issues. They should provide their input to the Legislature by early 2012 so that implementation legislation can be adopted before the start of the 2012-13 fiscal year. For example, the Legislature could direct the creation of working groups in each of the major program areas affected by realignment with instruction to meet regularly and report back to the Legislature on its progress periodically over the fall and in January around the time the Governor releases his 2012-13 budget proposal. The Legislature could also hold interim hearings to receive the input of the public and various stakeholders. Ultimately, we believe that this type of approach has the potential to identify ways to balance the sometimes-competing interests of different stakeholders, avoid mistakes of past realignments, and improve fiscal and programmatic outcomes associated with this realignment.

## APPENDIX: DETAILED DESCRIPTIONS OF REALIGNED PROGRAMS

The 2011 realignment package includes a broader array of programs than any other state-local realignment in modern California history: criminal justice, health, and social services programs. In many cases, particularly in the area of criminal justice, specific programs were selected for inclusion in the 2011 realignment package based on the belief that local governments have the capacity to operate the programs more effectively than the state. Similar to the case in 1991, however, the 2011 realignment package also includes some programs where there is much less agreement that greater local control could yield improved outcomes. We describe the programs included in the realignment package below.

### CRIMINAL JUSTICE PROGRAMS

The realigned criminal justice programs are (1) adult offenders and parolees, (2) court security,

(3) pre-2011 juvenile justice realignment, and (4) a variety of local public safety grant programs. Each of the accounts and subaccounts related to the realignment of criminal justice programs is listed in Figure 1. All of these programs are funded from the Local Revenue Fund 2011. The figure also displays some details on how the funding provided to these programs is allocated.

### Adult Offenders and Parolees (\$1.59 Billion)

As part of the 2011-12 budget package, the Legislature shifted the responsibility for certain lower-level offenders, parole violators, and parolees from the state to the counties on a prospective basis effective October 1, 2011. Under the realignment plan, offenders sentenced for certain nonserious, nonviolent crimes—who have no prior serious or violent criminal convictions and who are not required to register as sex offenders—will now

Figure 1

### Summary of 2011-12 Criminal Justice Allocations in the Local Revenue Fund 2011

(Dollars in Millions)

Account	Estimated Allocation	Allocation From LRF 2011	Allocation Cap	Distribution Among Counties
Local Community Corrections <sup>a</sup>	\$354	8.89%	No	Specific allocations
District Attorney and Public Defender	13	0.32	Yes	Specific allocations
Local Law Enforcement Services	490	Total allocation guaranteed	Yes	Various formulas in existing law
Trial Court Security	496	12.45	Yes	Discretion of DOF
Juvenile Justice	97	2.44	Yes	Consistent with existing law
Youthful Offender Block Grant Subaccount	(93)	(2.35)	Yes	Formula in existing law
Juvenile Reentry Grant Subaccount	(4)	(0.09)	Yes	Based on criteria in existing law
<b>Total</b>	<b>\$1,450</b>			

<sup>a</sup> Not shown here is estimated \$1.2 billion in payments to the state related to housing and supervising offenders and parolees. LRF = Local Revenue Fund; DOF = Department of Finance.

serve their sentence in a county jail and/or under local community supervision rather than in state prison. In addition, certain offenders released from prison will now be supervised in the community by county agencies (such as county probation) instead of by state parole agents. When locally supervised offenders violate the terms and conditions of their supervision, the courts, rather than the Board of Parole Hearings, will preside over revocation hearings to determine if they should be revoked to county jail. According to the administration, these changes are projected to reduce the state inmate population by about 14,000 inmates in 2011-12 and nearly 40,000 inmates (roughly one-fourth of the total inmate population) upon full implementation in 2014-15. The state parolee population is projected to decline by about 25,000 parolees in 2011-12 and by 77,000 parolees (roughly three-fourths of the total parolee population) in 2014-15. The budget assumes that the reduction in the inmate and parolee populations will result in state savings of about \$453 million in 2011-12, growing to \$1.5 billion upon full implementation.

The realignment plan assumes a total of \$1.6 billion from the Local Revenue Fund 2011 to support the realignment of adult offenders and parolees in 2011. Of this total, \$354 million will be transferred to the newly established Local Community Corrections Account to support the local incarceration and supervision of the realigned offenders. In addition, the plan estimates that about \$13 million will be transferred into the District Attorney and Public Defender Account to support the involvement of district attorneys and public defenders in parole revocation proceedings. The funds in these two accounts will be distributed in 2011-12 to counties based on a formula that takes into account various factors, such as the proportion of the state prison population that is from a particular county. The realignment plan also assumes that the Local Revenue Fund 2011

will reimburse the state about \$1.2 billion for costs incurred in 2011-12 for lower-level offenders in state prison who were sentenced prior to October 1, 2011.

### **Local Public Safety Grant Programs (\$490 Million)**

Under the realignment plan, funding for various local public safety grant programs (such as the Citizens' Option for Public Safety Program, juvenile justice grant programs, and booking fees) will be shifted directly to local governments (cities and counties) for the same purposes as specified in existing statutes.

Under the plan, a total of about \$490 million will be transferred to the newly established Local Law Enforcement Services Account—an estimated \$453 million from the redirection of existing vehicle license fee revenue and \$37 million from the Local Revenue Fund 2011—to support the realigned public safety grant programs. For 2011-12, the funds in this account will be allocated to local governments by the State Controller's Office generally based on the level of funding received for each grant program in recent years. The realignment plan requires that, if there are insufficient revenues to fully fund this account, the Director of Finance shall allocate the funds necessary from the Local Revenue Fund 2011 to provide the full allocation. Figure 2 lists the 12 grant programs and the level of funding provided for each.

### **Court Security (\$496 Million)**

Current law generally requires trial courts to contract with their local sheriff's offices for court security. Under the realignment plan, the sheriffs would continue to be responsible for providing court security. However, funding to pay for the security now will be provided directly to the sheriffs rather than being appropriated in the annual state budget to the trial courts. Existing

statutes related to court security (such as the requirement that each trial court negotiate a memorandum of understanding with the sheriff specifying the level of security to be provided) are unchanged.

The realignment plan estimates that \$496 million from the Local Revenue Fund 2011 will be transferred to the newly established Trial Court Security Account for allocation to county sheriffs for the provision of court security. Under the terms of the realignment legislation, the Department of Finance (DOF) will determine how much money is allocated to each county sheriff for these purposes in 2011-12. According to DOF, the allocation of funds in 2011-12 will generally be determined based on the amount of state funding a given sheriff’s office received in 2010-11 for court security.

**Pre-2011 Juvenile Justice Realignment (\$97 Million)**

Under recent statutory changes (enacted prior to the 2011 realignment package), only certain juvenile offenders who are violent, serious, or sex offenders may be committed to youth correctional facilities operated by the state. Counties are responsible for the housing and supervision of all other juvenile offenders, as well as for the community supervision of all offenders upon their release from state youth correctional facilities, including some who previously were state responsibility. Counties receive state funding from two grants to support these responsibilities—the

**Figure 2**  
**Local Law Enforcement Services Account—2011-12**

(In Millions)

Program	Funding
County probation grants	\$151.8
Citizens’ Option for Public Safety	107.1
Juvenile Justice Crime Prevention Act	107.1
Booking fees	35.0
Juvenile camps and ranches	29.4
War on Methamphetamine grants	19.5
Small and Rural Sheriffs Grant program	18.5
High-Tech Theft Apprehension	11.0
Sexual Assault Felony Enforcement Program	5.1
Rural Crime Prevention	3.7
Gang Violence Suppression	1.6
Multi-Agency Gang Enforcement Consortium Program	0.1
<b>Total</b>	<b>\$489.9</b>

Youthful Offender Block Grant Program and the Juvenile Reentry Grant.

Under the 2011 realignment plan, funding for these grants is shifted directly to counties and may be used for the same purposes as specified in existing statutes. The realignment plan estimates that \$97 million from the Local Revenue Fund 2011 will be transferred to the Juvenile Justice Account in support for the grants—\$93.4 million for the Youthful Offender Block Grant Program and \$3.7 million for the Juvenile Reentry Grant. The allocation of these grants among the 58 counties is unchanged in 2011-12 from existing law.

**HEALTH AND HUMAN SERVICES PROGRAMS**

The 2011 realignment package increases county funding responsibility for: (1) Mental Health Managed Care (MHMC), (2) Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), (3) drug and alcohol programs, (4) Foster Care and Child Welfare Services (CWS), and (5) Adult Protective Services (APS). The realignment package also includes a complex transfer of funds related to the 1991 mental health realignment and California Work Opportunity and Responsibility

to Kids (CalWORKs). As shown in Figure 3, most of these programs are funded from the Local Revenue Fund 2011. (The two programs funded on a one-time basis from the Mental Health Services Fund—MHMC and EPSDT—are not displayed in Figure 3.) The figure identifies each of these programs’ 2011 funding by source and provides some additional information regarding how the funding is allocated among counties and accounts.

**Mental Health Managed Care (\$184 Million)**

County Mental Health Plans administer MHMC and are responsible for ensuring that Medi-Cal beneficiaries receive specialty mental health services. Under a federal waiver, specialty mental health services are “carved out” of

the Medi-Cal Program administered by the Department of Health Care Services, which provides physical health care. County mental health plans generally have responsibility for authorization and payment of Medi-Cal covered psychiatric inpatient hospital services, and outpatient specialty mental health services. In November 2004, the state’s voters approved Proposition 63, an initiative that allocated additional state revenues generated through a surcharge on taxpayers earning more than \$1 million annually for various specified community mental health programs.

Under realignment, in 2011-12 about \$184 million of Proposition 63 (Mental Health Services Act) funds will be redirected and used in lieu of General Fund on a one-time basis to support

**Figure 3**  
**2011-12 Local Revenue Fund Allocations to Health and Human Services**

*(Dollars in Millions)*

Account/ Subaccount	Estimated Allocation	Allocation From LRF 2011	Allocation Cap	Distribution Among Counties
<b>Health and Human Services Account</b>	<b>\$1,806</b>	<b>45.31%</b>	No	Consistent with prior- year allocations
Subaccounts:				
Drug Medi-Cal	(131)	(3.29)	No	Discretion of DOF
Non Drug Medi-Cal Substance Abuse Treatment Services	(21)	(0.52)	No	Discretion of DOF
Drug Court	(27)	(0.68)	No	Discretion of DOF
WCRTS	(5)	(0.13)	No	Discretion of DOF
Child Welfare	(640)	(16.05)	No	Discretion of DOF
Foster Care	(462)	(11.59)	No	Discretion of DOF
Adoptions Assistance	(382)	(9.56)	No	Discretion of DOF
Adoptions	(70)	(1.77)	No	Discretion of DOF
Child Abuse Prevention	(13)	(0.34)	No	Discretion of DOF
Adult Protective Services	(55)	(1.38)	No	Consistent with prior- year allocations
<b>Mental Health Account</b>	<b>\$1,084</b>	<b>\$90.3 Million Per Month</b>	Yes	Based on 1991 realignment formula
Transfer to CalWORKs (1991 Realignment Social Services)	(1,066)	Equivalent to amount deposited into 1991 Mental Health	Yes	Equal to 1991 mental health formula for each county
Transfer to Mental Health (1991 Realignment Mental Health)	(18)	Remainder after transfer to Social Services	Yes	Not specified

LRF = Local Revenue Fund; DOF = Department of Finance; WCRTS = Women and Children’s Residential Treatment Services.

MHMC. Proposition 63 revenues are not deposited into the Local Revenue Fund 2011. Although the final budget package did not specify ongoing realignment allocations, the administration's plan was for realignment revenues to substitute for the Proposition 63 funds on an ongoing basis beginning in 2012-13.

### **Early and Periodic Screening, Diagnosis, and Treatment (\$579 Million)**

The EPSDT is a federally mandated program that requires the state to provide Medi-Cal beneficiaries under age 21 with any physical and mental health services that are deemed medically necessary to correct or ameliorate a defect, physical or mental illness, including services not otherwise included in the state's Medicaid plan. The program covers periodic health screening, vision, dental, and hearing services, as well as some mental health services (including crisis intervention and medication monitoring). County mental health plans generally have responsibility for authorization and payment of mental health services provided through EPSDT.

Under realignment, in 2011-12 about \$580 million of Proposition 63 funds will be redirected and used in lieu of General Fund on a one-time basis to support EPSDT. Proposition 63 funds are not deposited into the Local Revenue Fund 2011. Although the final budget package did not specify ongoing realignment allocations, similar to the case for MHMC, the administration's plan was for realignment revenues to substitute for the Proposition 63 funds on an ongoing basis beginning in 2012-13.

### **Drug and Alcohol Programs— Substance Abuse Treatment (\$184 Million)**

The budget plan realigns several substance abuse treatment programs that were previously funded through the Department of Alcohol and

Drug Programs (DADP). While DADP in the past provided funding and state oversight of these programs, the provision of services has long been administered primarily at the county level. The major substance abuse treatment programs realigned are:

- ***Regular and Perinatal Drug Medi-Cal.*** The Drug Medi-Cal program provides drug and alcohol-related treatment services to Medi-Cal beneficiaries. These include outpatient drug free services, narcotic replacement therapy, day care rehabilitative services, and residential services for pregnant and parenting women.
- ***Regular and Perinatal Non Drug Medi-Cal.*** The Non Drug Medi-Cal program provides drug and alcohol-related treatment services generally to individuals who do not qualify for Medi-Cal. This includes the Women and Children's Residential Treatment Services Program.
- ***Drug Courts.*** Drug courts link supervision and treatment of drug users with ongoing judicial monitoring and oversight. There are several different types of drug courts including: (1) dependency drug courts, which focus on cases involving parental rights; (2) adult drug courts, which focus on convicted felons or misdemeanants; and (3) juvenile drug courts, which focus on delinquency matters that involve substance-using juveniles.

The budget plan realigns a total of about \$184 million of DADP programs (Regular and Perinatal Drug Medi-Cal, \$131 million; Regular and Perinatal Non Drug-Medi-Cal, \$26 million; and Drug Courts, \$27 million) to the counties. Under the realignment plan, funding for these programs are deposited into four separate

subaccounts within the newly created Health and Human Services Account of the Local Revenue Fund 2011. Under realignment, some programs would be supported with a combination of realignment funds and federal matching funds, while other programs would be supported mainly by realignment funds.

### **Foster Care and Child Welfare Services (\$1.57 Billion)**

California's child welfare system was created to prevent, identify, and respond to allegations of child abuse and neglect. Under prior law, the state and counties shared the nonfederal costs of the child welfare system. Pursuant to the realignment legislation of 2011, counties now will bear 100 percent of the nonfederal costs for nearly the entire child welfare system, including CWS, Foster Care, Adoptions, AAP, and Child Abuse Prevention. (The state will continue to oversee the CWS Case Management System, social worker training, state-tribal agreements, and some adoptions services.) The realignment legislation does not change the major programmatic functions of the child welfare system. Counties, which were already responsible for ensuring the safety of children within their communities, will continue to make the decision of whether or not to remove a child from a home due to allegations of abuse or neglect. Meanwhile, the state will continue to oversee the child welfare system.

The budget legislation creates five child welfare system program subaccounts within the Health and Human Services Account of the Local Revenue Fund 2011. Under this arrangement, total funding for the child welfare system is estimated to be about \$1.6 billion in 2011-12. The allocations for each subaccount are designed to be equal to what the programs would have received in General Fund support absent realignment. Funding in the CWS Subaccount will be distributed among counties

based on the 2010-11 allocation structure. Funding in the other subaccounts will be distributed to counties based on an allocation provided by DOF.

### **Adult Protective Services (\$55 Million)**

County APS agencies investigate reports of abuse and neglect of elders and dependent adults who live in private settings. Upon investigating these reports, APS social workers may arrange for services such as counseling, money management, and out-of-home placement for the abused or neglected adult. Although there is no federal requirement to operate an APS program, state law currently requires that APS be available in all 58 counties.

The 2011-12 realignment legislation establishes the APS Subaccount within the Health and Human Services Account for the support of the APS program. The APS Subaccount will be allocated 1.38 percent of the funds available in the Local Revenue Fund 2011, which is estimated to be \$55 million in 2011-12. The funds from the APS Subaccount will be allocated to the local APS programs, to the extent possible, in the same way they were in 2010-11.

### **CalWORKs/Mental Health Transfer (\$1.08 Billion)**

The CalWORKs program provides cash grants and welfare-to-work services (such as child care, training, or job readiness) to families whose incomes are insufficient to meet their basic needs. The program is administered by the counties, but the state and federal governments provide the vast majority of funding. Although each county must provide grants and services consistent with state law, counties have significant control over how services are provided and when to sanction clients for noncompliance. With respect to funding, counties have a fixed maintenance-of-effort level for administration and welfare-to-work services,

and a 2.5 percent share of grant costs. The 2011 realignment legislation provides counties with revenue from the Local Revenue Fund 2011 for mental health programs, which then frees up existing county mental health funding to pay for a higher share of CalWORKs grant costs. This process is described in more detail below.

In 1991, the Legislature adopted realignment legislation that, among other changes, established several local funding streams for various mental health and other programs. This included creation of a mental health subaccount and a social services subaccount. The 1991 social services subaccount is available to fund several programs including CalWORKs. The 2011 realignment legislation provides \$1,084 million in funding for a new Mental Health Account in the Local Revenue Fund 2011. From this account, the 2011 legislation allocates to each county new mental health funding

equal to what it would have received in its mental health subaccount under the 1991 realignment formula. Because the new funding is now available to pay 1991 realignment-related mental health obligations, there is no detrimental effect on support for county mental health programs. The freed-up 1991 funds as a result of these provisions are then used by counties to pay for increased county shares of CalWORKs grant costs. On average this new county share for CalWORKs grants will be about 34 percent, but the exact amount will vary by county and be directly tied to what the county would have received under the 1991 formula for distribution of funding for mental health services. The amounts provided to counties will be recalculated each year to equal whatever they otherwise would have been under the 1991 formula.

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