

# Child Abuse Prevention Handbook

... and intervention guide



## ADDENDA I THROUGH IV

2007

Crime and Violence Prevention Center  
California Attorney General's Office

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This Addenda provides current information about the subject of child abuse and neglect reporting laws to assist mandated reporters and others in determining their reporting responsibilities. If there are discrepancies between the Addenda and the Handbook, please use the information in the addenda as the most current. The Addenda is not intended to be, and should not be, considered legal advice. In the event there are questions about reporting responsibilities in a specific case, the advice of legal counsel should be sought.

All revisions to the law in this Addenda reflect changes through December 2006 unless otherwise noted.

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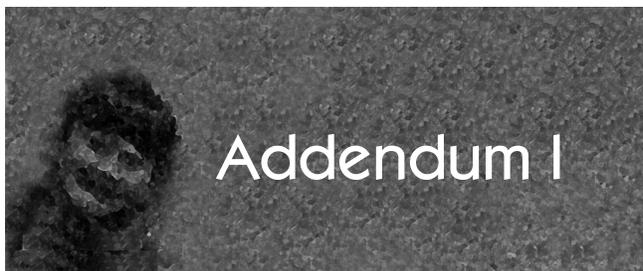
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# Child Abuse and Neglect Reporting Act

## Penal Code Section 11164.

- (a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.
- (b) The intent and purpose of this article is to protect children from abuse and neglect. In 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.

## Penal Code Section 11165.

As used in this article "child" means a person under the age of 18 years.

## Penal Code Section 11165.1.

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

- (a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).
- (b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:
  - (1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
  - (2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
  - (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.
  - (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
  - (5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

- (c) "Sexual exploitation" refers to any of the following:
- (1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).
  - (2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.
  - (3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

### **Penal Code Section 11165.2.**

As used in this article, "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.

- (a) "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 Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.
- (b) "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 parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

### **Penal Code Section 11165.3.**

As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of

any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

#### **Penal Code Section 11165.4.**

As used in this article, “unlawful corporal punishment or injury” means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also 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.

#### **Penal Code Section 11165.5.**

As used in this article, the term “abuse or neglect in out of home care” includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or 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, 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. “Abuse or neglect in out of home care” 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.

#### **Penal Code Section 11165.6.**

As used in this article, 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.

#### **Penal Code Section 11165.7.**

- (a) As used in this article, “mandated reporter” is defined as any of the following:
- (1) A teacher.
  - (2) An instructional aide.
  - (3) A teacher’s aide or teacher’s assistant employed by any public or private school.
  - (4) A classified employee of any public school.
  - (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.
  - (6) An administrator of a public or private day camp.
  - (7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

- (8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
- (9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
- (10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
- (11) A Head Start program teacher.
- (12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.
- (13) A public assistance worker.
- (14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
- (15) A social worker, probation officer, or parole officer.
- (16) An employee of a school district police or security department.
- (17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
- (18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
- (19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.
- (20) A firefighter, except for volunteer firefighters.
- (21) 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 currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.
- (22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.
- (23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.
- (24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
- (25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.
- (26) A state or county public health employee who treats a minor for venereal disease or any other condition.
- (27) A coroner.
- (28) A medical examiner, or any other person who performs autopsies.
- (29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

- (30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.
- (31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:
  - (A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.
  - (B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.
- (32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.
- (33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.
- (34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.
- (35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.
- (36) A custodial officer as defined in Section 831.5.
- (37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.
  - (b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.
  - (c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.
  - (d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws, shall report to the State Department of Education the reasons why this training is not provided.
  - (e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.
  - (f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

### **Penal Code Section 11165.9.**

Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare 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 referred 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. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all received reports.

### **Penal Code Section 11165.11.**

As used in this article, "licensing agency" means the State Department of Social Services office responsible for the licensing and enforcement of the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code), the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code), and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code), or the county licens-

ing agency which has contracted with the state for performance of those duties.

### **Penal Code Section 11165.12.**

As used in this article, the following definitions shall control:

- (a) "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 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.
- (c) "Inconclusive report" 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.

### **Penal Code Section 11165.13.**

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 or 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 11165.14.**

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.

### **Penal Code Section 11166.**

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 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. The mandated reporter shall make an initial report to the agency immediately, or as soon as is practicably possible, by telephone, and the mandated reporter shall prepare and send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any non-privileged documentary evidence the mandated reporter possesses relating to the incident.

(1) 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 or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

- (2) The agency shall be notified and a report shall be prepared and sent, faxed or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.
- (3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone follow up call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written follow up report.

- (1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written follow-up report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The

reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

- (2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.
  - (3) This subdivision shall become operative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.
  - (4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.
  - (5) Nothing in this section shall supercede the requirement that a mandated reporter first attempt to make a report via the telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporter and other persons as required.
- (c) 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 imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe

neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

- (d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.
- (2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.
- (3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian

of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

- (B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.
- (C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.
- (e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone, and shall prepare and send, fax or electronically transmit a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:
  - (1) Sexual intercourse, including genital genital, oral genital, anal genital, or oral anal, whether between persons of the same or opposite sex or between humans and animals.
  - (2) Penetration of the vagina or rectum by any object.
  - (3) Masturbation for the purpose of sexual stimulation of the viewer.
  - (4) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.
  - (5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.
- (f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).
- (g) 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 or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.
- (h) 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.
- (i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

- (2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.
- (3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.
- (j) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronic transmission 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 or neglect, as defined in 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 or probation department. A county probation or welfare department also shall 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 makes a telephone report under this subdivision.
- (k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax or electronically transmit to the agency given 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 or neglect reported to it, except

acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect 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. A law enforcement agency also shall 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 makes a telephone report under this subdivision.

### **Penal Code Section 11166.01.**

- (a) Except as provided in subdivision (b), any supervisor or administrator who violates paragraph (1) of subdivision (h) of Section 11166 shall be punished by not more than six months in the county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.
- (b) Notwithstanding Section 11162, any mandated reporter who willfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect, in violation of this article, where that abuse or neglect results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

### **Penal Code Section 11166.05.**

Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.

### **Penal Code Section 11166.1.**

(a) When an agency receives a report pursuant to Section 11166 that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

- (1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.
- (2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of an agency specified in Section 11165.9 who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with Section 11166. The agency shall maintain

a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the agency within 30 days of the request.

### **Penal Code Section 11166.2.**

In addition to the reports required under Section 11166, any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone, fax, or electronic transmission 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 makes a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

### **Penal Code Section 11166.3.**

(a) The 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. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation.

The county welfare department or probation department shall, in cases where a

minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefore to the district attorney on or before the completion of the investigation. The written findings and the reasons therefore shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859.

- (b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of subdivision (a) of Section 1502, Section 1596.750 or 1596.76 of the Health and Safety Code, and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

### **Penal Code Section 11166.5.**

- (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his

or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

- (b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misde-

meanor, punishable by up to six months in a county jail, by a fine of one thousand dollars (\$1,000), or by both imprisonment and fine.

- (c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.
- (d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.
- (e) Any person providing services to a minor child, as described in paragraph (37) of subdivision (a) of Section 11165.7, shall not be required to make a report pursuant to Section 11166 unless that person has received training, or instructional materials in the appropriate language, on the duties imposed by this article, including identifying and reporting child abuse and neglect.

### **Penal Code Section 11167.**

- (a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name,

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

- (b) Information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.
- (c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.
- (d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800)

of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out of home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

- (2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.
- (e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166 or Section 11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.
- (f) Persons who may report pursuant to subdivision (f) of Section 11166 are not required to include their names.

### **Penal Code Section 11167.5.**

- (a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05 and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars (\$500), or by both that imprisonment and fine.
- (b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:
  - (1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.
  - (2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170 or subdivision (a) of Section 11170.5.
  - (3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under.
  - (4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.
  - (5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.
  - (6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out of home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out of home care facility.
  - (7) Hospital scan teams. As used in this paragraph, "hospital scan 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.
- (8) Coroners and medical examiners when conducting a postmortem examination of a child.
  - (9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.
  - (10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.
  - (11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (6) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (e) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.
  - (12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out of state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of both (A) a specific out-of-state statute or interstate compact provision that requires that the information contained within these reports be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and (B) criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.
  - (13) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.
- (c) Authorized persons within county health departments shall be permitted to receive

copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

- (d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.
- (e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

### **Penal Code Section 11168.**

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.

### **Penal Code Section 11169.**

- (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.

## Penal Code Section 11170.

- (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.
- (2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.
- (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.
- (b)(1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor 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 agency shall make that information available to the reporting medical practitioner, 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.
- (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 to report of the results of the investigation and of any action the agency is taking with regard to the child or family.
- (3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.
- (4) 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, pursuant to Section 1522.1

or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

- (5) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.
- (6) 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 children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, 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. Upon receipt of relevant information concerning child abuse or

neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

- (7) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.
- (8) (A) 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 (4), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (6), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (7), 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, licens-

ing, placement of a child, or employment as a peace officer.

- (B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.
- (9) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (4) or (7), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost of living adjustment for the department. In no case shall the fee exceed fifteen dollars (\$15).
- (B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.
- (C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).
- (c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning

child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. 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.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

- (d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out of state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the

requesting state or the applicable interstate compact provision. In the absence of a specified out of state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

- (e)(1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.
- (2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.
- (f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

## **Penal Code Section 11170.5.**

- (a) Notwithstanding paragraph (4) of subdivision (b) of Section 11170, the Department of Justice shall make available to a licensed adoption agency, as defined in Section 8530 of the Family Code, information regarding a known or suspected child abuser maintained in the Child Abuse Central Index, pursuant to subdivision (a) of Section 11170, concerning any person who has submitted to the agency an application for adoption.
- (b) A licensed adoption agency, to which disclosure of any information pursuant to subdivision (a) is authorized, 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 the sufficiency of the evidence for making decisions when evaluating an application for adoption.
- (c) Whenever information contained in the Department of Justice files is furnished as the result of an application for adoption pursuant to subdivision (a), the Department of Justice may charge the agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost of living adjustment for the department. In no case shall the fee exceed fifteen dollars (\$15).

All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Sexual Habitual Offender Fund pursuant to subparagraph (C) of paragraph (9) of subdivision (b) of Section 11170.

## **Penal Code Section 11171.**

- (a)(1) The Legislature hereby finds and declares that adequate protection of

victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.

- (2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.
- (b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriffs Association, the California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination protocols for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section 13823.5.
- (c) The forms shall include, but not be limited to, a place for notation concerning each of the following:
  - (1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.
  - (2) Addressing relevant consent issues, if indicated.
  - (3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.
  - (4) The performance of a physical examination for evidence of child physical abuse or neglect.

- (5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.
  - (6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.
  - (7) Procedures for the preservation and disposition of evidence.
  - (8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and x-rays.
  - (9) An assessment as to whether there are findings that indicate physical abuse or neglect.
- (d) The forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of the agency or agencies designated by the Director of Finance pursuant to Section 13820 and subject to the confidentiality laws pertaining to the release of a medical forensic examination records.
- (e) The forms shall be made accessible for use on the Internet.

**Penal Code Section 11171.2.**

- (a) A physician and surgeon or dentist or their agents and by their direction may take skeletal x-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.
- (b) Neither the physician patient privilege nor the psychotherapist patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

**Penal Code Section 11171.5.**

- (a) If a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be x-rayed without parental consent.  
Any x-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.
- (b) With respect to the cost of an x-ray taken by the county coroner or at the request of the county coroner in suspected child abuse or neglect cases, the county may charge the parent or legal guardian of the child victim the costs incurred by the county for the x-ray.
- (c) No person who administers an x-ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the x-ray.

**Penal Code Section 11172.**

- (a) 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. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the

report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

- (b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.
- (c) (1) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The

California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000).

- (2) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.
- (d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

### **Penal Code Section 11174.**

The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of abuse in out-of-home care, as defined in Section 11165.5, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

### **Penal Code Section 11174.1.**

- (a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.
- (b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department

of Social Services shall prescribe the following regulations:

- (1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.
  - (2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse or neglect, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.
- (c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse or neglect, as defined in Section 11165.6.

### **Penal Code Section 11174.3.**

- (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out of home care facility. The child shall be

afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

- (b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.



# Juvenile Dependency Proceedings

A child abused by a parent or guardian may be involved in a dependency action. The same child also may be involved in a family court custody action or proceeding to terminate parental rights, a probate court guardianship action, or a criminal prosecution. Dependency actions are under the jurisdiction of the juvenile court, which is a department or subdivision of the superior court.

**The intent of juvenile dependency proceedings as defined by the Welfare and Institutions Code, division 2, part 1, chapter 2, section 300.2,** is “to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent re-abuse of children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well being of the child. The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.”

## **Grounds for Dependency**

Welfare and Institutions Code section 300 et seq., specifies grounds for declaring a child a dependent of the juvenile court.

### **Section 300. Minors subject to jurisdiction; legislative intent and declarations; guardian defined**

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court, which may adjudge that person to be a dependent child of the court:

- (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, “serious physical harm” does not include reasonable and age appropriate spanking to the buttocks where there is no evidence of serious physical injury.
- (b) The child has suffered, or there is a substantial risk that the child will suffer, serious

physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, non-treatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or non-treatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or non-treatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as

is necessary to protect the child from risk of suffering serious physical harm or illness.

- (c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.
- (d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.
- (e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone

fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

- (f) The child's parent or guardian caused the death of another child through abuse or neglect.
- (g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.
- (h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.
- (i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.
- (j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected,

as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the description of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parent training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of age, dependent status, or foster care status of the parent.

As used in this section, "guardian" means the legal guardian of the child.

## Dependency Petition

Whenever a social worker has cause to believe that a child within the county falls within the provisions of Welfare and Institutions Code section 300, he or she must immediately make any investigation as deemed necessary to determine whether child welfare services should be offered to the family and whether dependency proceedings should be commenced in the juvenile court. (Welf. & Inst. Code, § 328.) Dependency proceedings are initiated by filing a petition to declare a child a dependent of the court. (Welf. & Inst. Code, § 325.)

If it is known to the petitioner that one of the parents is a victim of domestic violence and that parent is currently living separately from the batterer parent, the address of the victim parent shall remain confidential. (Welf. & Inst. Code, § 332, subd. (e).)

The petition must include, among other information, a concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted. (Welf. & Inst. Code, § 332, subd. (f).)

Dependency petitions can be filed regardless of whether a child is taken into custody. If another person applies to the social worker to commence dependency proceedings and the social worker fails to do so within three weeks, that person may, within one month of the initial application, apply to the juvenile court to review the decision of the social worker. The court may either affirm the social worker's decision or order him or her to commence juvenile court proceedings. (Welf. & Inst. Code, § 329, 331.)

## Informal Supervision

A social worker may, in lieu of filing a petition or subsequent to dismissal of a petition already filed, undertake a program of supervision of a

child with the consent of the parent or guardian within the time period specified by Welfare and Institution Code sections 16506 and 16507.3. During that period, the social worker provides or arranges for services to attempt to ameliorate the situation which brings the child within, or creates the probability that the child will be within, the jurisdiction of section 300. If the family does not cooperate, the social worker may file a dependency petition. He or she may also file a petition if the child's circumstances warrant it, even if the parents cooperate. (Welf. & Inst. Code, § 301.)

## Temporary Custody of a Minor

The laws pertaining to the taking of a minor into custody of the juvenile court or the taking of a minor into temporary custody by a peace officer, probation officer, or social worker are found in the following sections of Welfare and Institutions Code.

### Section 305. Conditions allowing temporary custody without warrant

Any peace officer may, without a warrant, take into temporary custody a minor:

- (a) When the officer has reasonable cause for believing that the minor is a person described in section 300, and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In cases in which the child is left unattended, the peace officer shall first attempt to contact the child's parent or guardian to determine if the parent or guardian is able to assume custody of the child. If the parent or guardian cannot be contacted, the peace officer shall notify a social worker in the county welfare department to assume custody of the child.

- (b) Who is in a hospital and release of the minor to a parent poses an immediate danger to the child's health or safety.
- (c) Who is a dependent child of the juvenile court, or concerning whom an order has been made under section 319, when the officer has reasonable cause for believing that the minor has violated an order of the juvenile court or has left any placement ordered by the juvenile court.
- (d) Who is found in any street or public place suffering from any sickness or injury, which requires care, medical treatment, hospitalization, or other remedial care.

**Section 306. Social works and Indian tribes; power to perform probation officer functions**

- (a) Any social worker in a county welfare department, or an Indian tribe that has entered into an agreement pursuant to Section 10553.1 while acting within the scope of his or her regular duties under the direction of the juvenile court and pursuant to subdivision (b) of Section 272, may do all of the following:
  - (1) Receive and maintain, pending investigation, temporary custody of a minor who is described in Section 300, and who has been delivered by a peace officer.
  - (2) Take into and maintain temporary custody of, without a warrant, a minor who has been declared a dependent child of the juvenile court under Section 300 or who the social worker has reasonable cause to believe is a person described in subdivision (b) or (g) of Section 300, and the social worker has reasonable cause to believe that the minor has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety.

Before taking a minor into custody a social worker shall consider whether there are any reasonable services available to the worker which, if provided to the minor's parent, guardian, caretaker, or to the minor, would eliminate the need to remove the minor from the custody of his or her parent, guardian, or caretaker. In addition, the social worker shall also consider whether a referral to public assistance pursuant to chapter 2 (commencing with section 11200) of part 3, chapter 7 (commencing with section 14000) of part 3, chapter 1 (commencing with section 17000) of part 5, and chapter 10 (commencing with section 18900) of part 6, of division 9 would eliminate the need to take temporary custody of the minor. If those services are available they shall be utilized. And further, the social worker shall consider whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence and is likely to remain withdrawn. (Welf. & Inst. Code, § 306, subd. (b).

Any peace officer, probation officer, or social worker who has taken a minor into temporary custody is required by the following sections of the Welfare and Institutions Code to do the following:

**Section 307.4. Notice to parent or guardian; written statement of procedural rights and preliminary proceedings; failure to notify**

- (a) Any peace officer, probation officer, or social worker who takes into temporary custody pursuant to Sections 305 to 307, inclusive, a minor who comes within the description of Section 300 shall immediately inform, through the most efficient means available, the parent, guardian, or responsible relative, that the minor has been taken into protective custody and that a written statement is available which explains the parent's or guardian's proce-

dural rights and the preliminary stages of the dependency investigation and hearing. The Judicial Council shall, in consultation with the County Welfare Directors Association of California, adopt a form for a written statement, which shall be in simple language and shall be printed and distributed by the county. The written statement shall be made available for distribution through all public schools, probation offices, and appropriate welfare offices. It shall include, but is not limited to, the following information:

- (1) The conditions under which the minor will be released, hearings which may be required, and the means whereby further specific information about the minor's case and conditions of confinement may be obtained.
  - (2) The rights to counsel, privileges against self-incrimination, and rights to appeal possessed by the minor, and his or her parents, guardians, or responsible relative.
- (b) If a good faith attempt was made at notification, the failure on the part of the peace officer, probation officer, or social worker to notify the parent or guardian that the written information required by subdivision (a) is available shall be considered to be due to circumstances beyond the control of the peace officer, probation officer, or social worker, and shall not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations accorded under any other law.

### **Section 308. Notice to parent or guardian; right to make telephone calls**

- (a) When a peace officer or social worker takes a minor into custody pursuant to this article, he or she shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that the minor 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 minor 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, at which time the judge may authorize, upon a finding of good cause, the disclosure of the address. However, the court may order the release of the address of the licensed foster family home to the minor's parent, guardian, or responsible relative upon notification of the licensed foster family home in cases where a petition to challenge jurisdiction or other motion to delay the dispositional hearing beyond 60 days after the hearing at which the minor was ordered removed or detained, pursuant to subdivision (b) of Section 352, is granted. Moreover, a foster parent may authorize the release of the address of the foster family home at any time during the placement. The county welfare department shall make a diligent and reasonable effort to ensure regular telephone contact between the parent and a child of any age, prior to the detention hearing, unless that contact would be detrimental to the child. The initial telephone contact shall take place as soon as practicable, but no later than five hours after the child is taken into custody.

- (b) Immediately after being taken to a place of confinement pursuant to this article and, except where physically impossible, no later than one hour after he or she has been taken into custody, a minor 10 years of age or older shall be advised that he or she has the right to make at least two telephone calls from the place where he or she is being held, one call completed to his or her parent, guardian, or a responsible relative, and another call completed to an attorney. The calls shall be at public expense, if the calls are completed to telephone numbers within the local calling area, and in the presence of a public officer or employee. Any public

officer or employee who willfully deprives a minor taken into custody of his or her right to make these telephone calls is guilty of a misdemeanor.

### **Section 309. Investigation; release of child**

- (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative unless one or more of the following conditions exist:
- (1) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child.
  - (2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative.
  - (3) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.
  - (4) The child has left a placement in which he or she was placed by the juvenile court.
  - (5) The parent or other person having lawful custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code and did not reclaim the child within the 14-day period specified in subdivision (e) of that section.
- (b) In any case in which there is reasonable cause for believing that a child who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved and is a person described in section 300, the child shall be deemed to have been taken into temporary custody and delivered to the social worker for the purposes of this chapter while the child is at the office of the physician or surgeon or the medical facility.
- (c) If the child is not released to his or her parent or guardian, the child shall be deemed detained for purposes of this chapter.
- (d) (1) If an able and willing relative, as defined in Section 319, or an able and willing non-relative extended family member, as defined in Section 362.7, is available and requests temporary placement of the child pending the detention hearing, the county welfare department shall initiate an assessment of the relative's or non-relative extended family member's suitability, which shall include an in-home inspection to access the safety of the home and the ability of the relative or non-relative extended family member to care for the child's needs, and a consideration of the results of a criminal records check conducted pursuant to subdivision (a) of Section 16504.5 and a check of allegations of prior child abuse or neglect concerning the relative or non-relative extended family member and other adults in the home. Upon completion of this assessment, the child may be placed in the assessed home. For purposes of this paragraph, and except for the criminal records check conducted by pursuant to subdivision (a) of Section 16504.5, the standards used to determine suitability shall be the same standards set forth in the regulations for the licensing of foster family homes.

- (2) Immediately following the placement of a child in the home of a relative or a non-relative extended family member, the county welfare department shall evaluate and approve or deny the home for purposes of AFDC-FC eligibility pursuant to Section 11402. The standards used to evaluate and grant or deny approval of the home of the relative and of the home of a nonrelative extended family member, as described in Section 362.7, shall be the same standards set forth in regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver.
- (3) If a relative or nonrelative extended family member meets all other conditions for approval, except for the receipt of the Federal Bureau of Investigation's criminal history information for the relative or nonrelative extended family member, and other adults in the home, as indicated, the county welfare department may approve the home and document that approval, if the relative or nonrelative extended family member, and each adult in the home, has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after the approval has been granted, the department determines that the relative or non-relative extended family member or other adult in the home has a criminal record, the approval may be terminated.

If the probation officer (social worker) determines to release the minor to the minor's parent, guardian, or responsible relative, the probation officer (social worker) may require, as a condition for the minor's release, for the minor or the minor's

parent, guardian, or relative, or both, to sign a written promise that either or both of them will appear before the probation officer (social worker) at suitable place designated by the probation officer (social worker) at a specified time. (Welf. & Inst. Code, § 310.)

However, if the probation officer (social worker) determines that the minor shall be retained in custody, he or she shall immediately file a petition (pursuant to Welf. & Inst. Code § 332) with the clerk of the juvenile court who shall set the matter for hearing on the detention hearing calendar. (Welf. & Inst. Code, § 311.) The probation officer (social worker) shall thereupon: (1) notify each parent or each guardian of the minor of the time and place of the hearing if the whereabouts of the parent or guardian can be ascertained by due diligence; (2) serve those persons entitled to notice of the hearing (under the provisions of Welf. & Inst. Code § 290.1) with a copy of the petition; and, (3) notify those persons of the time and place of the detention hearing. This notice may be given orally and shall be given in this manner if it appears that the parent does not read. (Welf. & Inst. Code, § 290.1.)

Unless a petition to declare the minor a dependent child has been filed, a minor being held in temporary custody by a peace officer, social worker, or probation officer must be released within 48 hours after being taken into custody, excluding non-judicial days. (Welf. & Inst. Code, § 313.)

If a minor has been held in custody for more than six hours by the probation officer (social worker) but was subsequently released and no petition was filed, the probation officer (social worker) must prepare a written explanation of why the minor was held in custody for more than six hours. The written explanation shall be prepared within 72 hours after the minor is released from custody and filed in the record of the case. Also, a copy of the written explanation must be sent to the parents, guardian, or other person having care or custody of the minor. (Welf. & Inst. Code, § 313.)

When a minor willfully misrepresents himself to be 18 years of age or older when taken into custody by a peace officer or probation officer (or social worker), and this misrepresentation effects a material delay in investigation which prevents the filing of a petition pursuant to the provisions of this chapter, such petition or complaint shall be filed within 48 hours from the time his or her true age is determined, excluding non-judicial days. If, in such cases, the petition is not filed within the time prescribed by this section, the minor shall be immediately released from custody. (Welf. & Inst. Code, § 314.)

## **Appointed Counsel For Parents and Children**

In dependency actions the attorney representing the case of the county welfare or probation department acting on behalf of the child is the district attorney, the county counsel, or a contract counsel. Currently, county counsel represents the county welfare department in most counties.

In dependency actions the court must appoint counsel for the child unless the court finds that the child would not benefit from counsel. The court also must appoint separate counsel for the child's parent or guardian or Indian custodian if the parent or guardian or Indian custodian is indigent and requests counsel. (Welf. & Inst. Code, § 317.) The petitioning agency cannot represent the child. Counsel for the minor may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the minor's interests. (Welf. & Inst. Code, § 317.) The fact that the district attorney represents the minor in a proceeding pursuant to section 300 and also conducts a criminal investigation or files an information or complaint in a related criminal case is not in and of itself a conflict of interest. The

court may fix the compensation to be paid by the county for the services of appointed counsel, if counsel is not a county counsel, district attorney, or public defender. (Welf. & Inst. Code, § 317.)

Counsel appointed by the court shall represent the parent, guardian, or child at the initial hearing and at all subsequent proceedings before the juvenile court; the counsel upon entering an appearance on behalf of the parent, guardian, or child shall continue his or her representation unless relieved by the court upon the substitution of other counsel or for cause; and the counsel for the child shall be charged in general with the representation of the child's interests. (Welf. & Inst. Code, § 317.)

All parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel, and each child who is the subject of a dependency proceeding is a party to that proceeding. (Welf. & Inst. Code, § 317.5.)

In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. Counsel shall make such further investigations as he or she deems necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and depositions hearings; he or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In addition, the counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the

court other interests of the child that may be protected by other administrative or judicial proceedings. The court shall take whatever appropriate action is necessary to fully protect the interests of the child, and, notwithstanding any other provision of law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. Counsel shall be given access to records maintained by hospitals or by other medical or non-medical practitioners or by childcare custodian, in the manner prescribed by section 1158 of the Evidence Code. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide non-legal services to the child. (Welf. & Inst. Code, § 317.)

## Initial Hearing

To determine whether the child should be further detained pending the jurisdictional hearing, a child taken into custody must be brought before a judge or referee of the juvenile court for an initial hearing (also called an "initial petition hearing" or "detention hearing") before the expiration of the next judicial day after the filing of the dependency petition. (Welf. & Inst. Code, § 319.) The minor will be released from custody if he or she is not brought before the judge within this period. (Welf. & Inst. Code, § 315.)

The social worker shall report to the court on the reasons why the child has been removed from the parent's physical custody; the need, if any, for continued detention; the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents or guardians; and whether there are any relatives who are able and willing to take temporary physical custody of the child. The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300 and

any of the following circumstances exist:

- (1) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parent's or guardian's physical custody.
- (2) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.
- (3) The child has left a placement in which he or she was placed by the juvenile court.
- (4) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

If the child cannot be returned to the physical custody of his or her parent or guardian, then the court must determine whether there is a relative who is able and willing to care for the child. The court must also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of section 306, and whether there are available services that would prevent the need for further detention. (Welf. & Inst. Code, § 319.)

Upon the child's appearance before the court at the initial hearing, each parent or guardian and the child, if present, shall first be informed of the following: (1) the reasons why the child was taken into custody; (2) the nature of the juvenile court proceedings; and (3) the right of each parent or guardian and any child to be represented at every stage of the proceedings by counsel. (Welf. & Inst. Code, § 316.)

If the court finds that the child would not benefit from the appointment of counsel, and does not appoint counsel for the child, then

the court must appoint a Court Appointed Special Advocate (CASA) as the Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for the child. (Cal. Rules of Court, rule 1438 (e).)

A child advocate appointed by the court to represent the interests of a dependent child shall have the same duties and responsibilities as a guardian ad litem and shall be trained by and function under the auspices of a CASA guardian ad litem program, formed and operating under the guidelines established by the National Court Appointed Special Advocate Association. (Welf. & Inst. Code, § 356.5.)

At the initial hearing the court must inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. (Welf. & Inst. Code, § 316.2.) The court and the county welfare department must inquire whether the child is or may be an Indian child, and give notice accordingly. (Cal. Rules of Court, rule 1439 (d).)

At the initial hearing upon the petition filed in accordance with subdivision (c) of Rule 1406 of the California Rules of the Court or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or a finding is made dismissing the petition, the court may temporarily limit the right of the parent or guardian to make educational decisions for the child and temporarily appoint a responsible adult to make educational decisions for the child if all of the following conditions are found: (1) the parent or guardian is unavailable, unable, or unwilling to exercise educational rights for the child, (2) the county placing agency has made diligent efforts to locate and secure the participation of the parent or guardian in educational decision making, and (3) the child's educational needs cannot be met without the temporary appointment of a responsible adult. If the court cannot identify a responsible adult to make educational decisions for the child and the appointment of a

surrogate parent as defined in subsection (a) of Section 56050 of the Education Code is not warranted, the court may, with the input of any interested person, make educational decisions for the child. If the court makes educational decisions for the child, the court shall also issue appropriate orders to ensure that every effort is made to identify a responsible adult to make future educational decisions for the child. Any temporary appointment of a responsible adult and temporary limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed by court order. Any order made under this section shall expire at the conclusion of the hearing held pursuant to Section 361 or upon dismissal of the petition. Upon entering of disposition orders, any additional needed limitation on the parent's or guardian's educational rights shall be addressed pursuant to Section 361. (Welf. & Inst. Code, § 319, subd. (g).)

## **Jurisdictional Hearing**

Within 15 judicial days of the initial hearing, or 30 days of filing the petition if the child is not in custody, the court must conduct a jurisdictional hearing. (Welf. & Inst. Code, § 334.)

At the jurisdictional hearing, the court considers the question of whether the child is a person described by section 300. The court considers any matter or information relevant to the allegation that the child is such a person. The Rules of Evidence apply with certain exceptions and the standard of proof is a "preponderance of the evidence." (Welf. & Inst. Code, § 355.)

After hearing the evidence, the court makes a finding as to whether the child is a person described by one or more subdivisions of section 300. Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a child is of such a nature as would ordinarily not be sustained except as the

result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has the care or custody of the child, that finding shall be prima facie evidence that the child is a person described by subdivision (a), (b), or (d) of section 300. (Welf. & Inst. Code, § 355.1, subd. (a).) This presumption constitutes a presumption affecting the burden of producing evidence. (Welf. & Inst. Code, § 355.1, subd. (c).)

Proof that either parent, the guardian, or other person who has the care or custody of a minor who is the subject of a petition filed under section 300 has physically abused, neglected, or cruelly treated another child shall be admissible in evidence. (Welf. & Inst. Code, § 355.1, subd. (b).)

Where the court finds that either a parent, a guardian, or any other person who resides with, or has the care or custody of a child who is currently the subject of the petition filed under section 300 (1) has been previously convicted of sexual abuse as defined in section 11165.1 of the Penal Code, (2) has been previously convicted of an act in another state that would constitute sexual abuse as defined in section 11165.1 of the Penal Code if committed in this state, (3) has been found in a prior dependency hearing or similar proceeding in the corresponding court of another state to have committed an act of sexual abuse, or (4) is required, as the result of a felony conviction, to register as a sex offender pursuant to section 290 of the Penal Code, that finding shall be prima facie evidence in any proceeding that the subject child is a person described by subdivision (a), (b), (c), or (d) of section 300 and is at substantial risk of abuse or neglect. The prima facie evidence constitutes a presumption affecting the burden of producing evidence. (Welf. & Inst. Code, § 355.1, subd. (d).)

Where the court believes that a child has suffered criminal abuse or neglect, the court may

direct a representative of the child protective agency (e.g., social worker) to take action pursuant to subdivision (i) of section 11166 of the Penal Code. (Welf. & Inst. Code, § 355.1, subd. (e).)

Testimony by a parent, guardian, or other person who has the care or custody of the minor made the subject of a proceeding under section 300 shall not be admissible as evidence in any other action or proceeding. (Welf. & Inst. Code, § 355.1, subd. (f).)

If the child does not come within the description of section 300 as set forth in the petition, the petition is dismissed and the child is discharged from any restriction or detention previously ordered. If the court finds that the child is a person described by section 300, it will make and enter its findings accordingly. (Welf. & Inst. Code, § 356.) The court will then conduct a dispositional hearing to determine whether to adjudge the child a dependent of the court. (Welf. & Inst. Code, § 360.)

## **Dispositional Hearing**

If the court finds that the child is a person described by section 300, then the juvenile court must conduct a dispositional hearing within 10 judicial days to determine whether to adjudge the child a dependent child of the court. In lieu of adjudging the child a dependent child, the court may order that the parents participate in a program of services under the supervision of the social worker, or, if the parents and child agree, appoint a legal guardian for the child. (Welf. & Inst. Code, § 360, subs. (a) & (b).) If the child is adjudged a dependent child of the court, the court may limit the control to be exercised over the child by any parent or guardian, and the court will set forth all such limitations. Any limitations on the rights of the parent or guardian to make educational decisions for the child must be specifically addressed in the court order. (Welf. & Inst. Code, § 361, subd. (a).) If the

child is removed from parental custody and placed in foster care, then a local education agency must allow the child to remain in his or her school of origin for the duration of the academic year unless the child's best interest require otherwise. (Educ. Code, § 48853.5.)

However, these limitations shall not be construed to limit the ability of a parent to voluntarily relinquish his or her child for adoption. (Welf. & Inst. Code, § 361, subd. (b).)

Removal of the child from the physical custody of the parent or guardian requires a finding by clear and convincing evidence of any of the following (Welf. & Inst. Code, § 361, subd. (c)):

- (1) There is or would be substantial danger to the physical health, safety, protection, or physical or emotional well being of the child if he or she was returned home and there are no reasonable means to protect the child in the home.
- (2) The parent or guardian is unwilling to have physical custody of the child.
- (3) The child or a sibling is suffering severe emotional damage and there are no reasonable means to protect the child's emotional health without removing the child from the home.
- (4) The child has been sexually abused by a parent, guardian, or member of his or her household or other person known to his or her parent and there are no reasonable means to protect the child from further sexual abuse without removing the minor from the home, or the minor does not wish to return to the home.
- (5) The child has been left without any provisions for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the child, or a relative or other adult custodian with whom the child has been left by the parent is unwilling

or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

- (6) In an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a "qualified expert witness" as described in Section 224.6. (A) Stipulation by the parent, Indian Custodian, or the Indian child's tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirement of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily waived them. (B) Failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of this section, will not support an order for placement in the absence of the finding in this paragraph.

The court must state the facts on which the decision to remove was based. The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the child from his or her home. (Welf. & Inst. Code, § 316, subd. (d).) When a court orders the child to be removed from the physical custody of his or her parents or guardians, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time when the events or conditions arose that brought the child within the provisions of section 300, who desires to assume custody of the child. If such a parent requests

custody the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. (Welf. & Inst. Code, § 361.2, subd. (a).)

In any case in which a child is removed from the physical custody of his or her parents pursuant to section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. A relative is defined as an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or a sibling of the child. The court must order the parent to disclose to the county social worker the names, residences and any other known identifying information of any maternal or paternal relatives of the child. The social worker must contact the relatives given preferential consideration for placement to determine if they desire to have the child placed with them. (Welf. & Inst. Code, § 361.3.)

In determining whether placement with a relative is appropriate, the social worker and court shall consider the ability of the relative to provide a secure and stable environment for the child. Before approving the home of a relative, the county social worker must (1) conduct a state criminal records check of the relative and all persons age 18 and older living in the home; (2) obtain a state and federal fingerprint clearance for the relative and all persons age 18 or older living in the home; (3) conduct a check of the Child Abuse Central Index for the relative and all persons age 18 or older living in the home; (4) visit the home to

ascertain the safety and appropriateness of the placement. (Welf. & Inst. Code, § 361.4.) The social worker cannot approve a relative home if the relative or any person age 18 or older living in the home has been convicted of a crime other than a minor traffic violation, unless the county welfare director grants an exemption. (Health & Safety Code, § 1522.) The Legislature has declared that a physical disability, such as blindness or deafness, is no bar to the raising of children, and the determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. Consideration shall also be given to attempting to place siblings and step-siblings in the same home, if such a placement is found to be in their best interests. (Welf. & Inst. Code, § 361.3.)

If the child is taken from the physical custody of the child's parents or guardians and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child's parents or guardians in order to facilitate reunification of the family. In the event that there are no appropriate placements available in the parents' or guardians' county, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence. (Welf. & Inst. Code, § 361.2, subd. (f) (1), (2).)

Nothing in section 361.2 shall be interpreted as requiring multiple disruptions of the child's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the child should be moved, the social worker will take into consideration the potential harmful effects of disrupting the placement of the child and the parents' or guardians' reason for the move. (Welf. & Inst. Code, § 361.2, subd. (f) (3).)

Whenever the social worker must change the placement of the child and is unable to find

a suitable placement within the county and must place the child outside the county, no such placement shall be made until he or she has served written notice on the parents or guardians at least 14 days prior to the placement, unless the child's health or well being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons, which require placement outside the county. The parents or guardians may object to the placement no later than seven days after the receipt of the notice and, upon objection, the court shall hold a hearing within five days and prior to the placement. The court shall order out of county placement if it finds that the child's particular needs require placement outside the county. (Welf. & Inst. Code, § 361.2, subd. (g).)

Whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child, the child's mother and statutorily presumed father, (may order services to the biological father), or guardians for the purpose of facilitating reunification of the family. Child welfare services shall be provided as follows:

- (1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court ordered services shall not exceed a period of 12 months from the date the child entered foster care.
- (2) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court ordered services shall not exceed a period of six months from the date the child entered foster care.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to section 356 or the date that

is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian. (Welf. & Inst. Code, § 361.5, subd. (a).)

However, court ordered services may be extended up to a maximum time period not to exceed 18 months from the date of protective custody if it can be shown that the child will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. (Welf. & Inst. Code, § 366.21, subd. (g).) Physical custody of the child by the parents or guardians during the 18 month period shall not serve to interrupt the running of the period. (Welf. & Inst. Code, § 361.5, subd. (a).)

The court also shall make findings pursuant to subdivision (a) of section 366. When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child.

Reunification services need not be provided to a parent when the court finds, by clear and convincing evidence, any of the following (Welf. & Inst. Code, § 361.5, subd. (b)):

- (1) That the whereabouts of the parents or guardian is unknown.
- (2) That the parent is suffering from a mental disability that is described in section 7820 et seq. of the Family

- Code and that renders him or her incapable of utilizing those services.
- (3) That the child or a sibling of the child had been previously adjudicated a dependent pursuant to any subdivision of section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to section 361, that the child has been returned to the custody of the parent(s), guardian(s) from whom the child had been taken originally, and that the child is being removed pursuant to section 361, due to additional physical or sexual abuse.
  - (4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.
  - (5) That the child was brought within the jurisdiction of the court under subdivision (e) of section 300 because of the conduct of that parent or guardian.
  - (6) That the child has been adjudicated a dependent as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent or guardian and the court finds that it would not benefit the child to pursue reunification services with the offending parent or guardian.
  - (7) That the parent is not receiving reunification services for a sibling or a half-sibling of the child pursuant to paragraph (3), (5), or (6).
  - (8) That the child was conceived by means of the commission of an offense listed in section 288 or 288.5 of the Penal Code, or by an act committed outside of this state which, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.
  - (9) That the child was brought within the jurisdiction of the court under subdivision (g) of section 300, because the parent or guardian willfully abandoned the child and the abandonment constituted a serious danger to the child; or the parent or other person with custody of the child voluntarily surrendered the child pursuant to Health and Safety Code section 1255.7.
  - (10) That the court ordered termination of reunification services for any siblings or half-sibling of the child because the parent or guardian failed to reunify with the sibling after the sibling had been removed from that parent or guardian pursuant to section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) of section 366.5 and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to the removal of the sibling of that child from the parent or guardian.
  - (11) That the parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a) of section 361.5 and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from the parent.
  - (12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of section 667.5 of the Penal Code.
  - (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year

period immediately prior to the filing of the petition which brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

- (14) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.
- (15) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling's or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

In addition, if the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. (Welf. & Inst. Code, § 361.5 subd. (e).)

## Review Hearings

### Six-Month Review Hearing

The status of every dependent child in foster care must be reviewed periodically as determined by the court but no less frequently than once every six months. (Welf. & Inst. Code, § 366, subd. (a)) At the review hearing the court determines, among other things, the necessity for and appropriateness of the placement; the extent of the agency's compliance with the case plan in making reasonable efforts to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child; the continuing need to suspend sibling interaction, if applicable; the extent of progress toward alleviating or mitigating the causes necessitating placement; and a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or another planned permanent living arrangement. (Welf. & Inst. Code, § 366 subd. (a).)

In order to maintain ties between the parent or guardian and any sibling and child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian and whether to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child. No visitation order shall jeopardize the safety of the child. To protect the safety of the child, the court may keep the child's address confidential. (Welf. & Inst. Code, § 362.1, subd. (a) (1).) The order also must provide for visitation between the child and any siblings unless the court finds by clear and convincing evidence that sibling interaction is detrimental. (Welf. & Inst. Code, § 362.1, subd. (a) (2).)

At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to section 356.5; the court also shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided. (Welf. & Inst. Code, § 366.21, subd. (e).)

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services: (1) the child has been placed with a foster family that is eligible to adopt a child, or has been placed in a pre-adoptive home; (2) the case plan includes services to achieve a permanent placement for the child if efforts to reunify fail; (3) services to achieve permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family. (Welf. & Inst. Code, § 366.21, subd. (l).)

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of section 366; and where

relevant, the court shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12 month permanency hearing, a proceeding pursuant to section 366.26 may be instituted. If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated. This section does not apply in a case where, pursuant to section 361.5, the court has ordered that reunification services shall not be provided. (Welf. & Inst. Code, § 366.21, subd. (e).)

The court must also consider whether the agency has made reasonable efforts to maintain relationships between a child who is 10 years of age or older who is placed in out-of-home placement for six months or longer from the date the child entered foster care, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests. (Welf. & Inst. Code, § 366, subd. (a) (1) (B).) If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in any court ordered treatment plan, the court may schedule a hearing pursuant to section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing. (Welf. & Inst. Code, § 366.21, subd. (e).)

If the child was removed initially under subdivision (g) of section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or if the court finds the parent has failed to contact and visit the child, the court may schedule a hearing pursuant section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to section 366.26 within 120 days. (Welf. & Inst. Code, § 366.21, subd. (e).)

All children in foster care have certain enumerated rights as set forth in Welfare and Institutions Code section 16001.9.

## **12-Month Permanency Hearing**

The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. (Welf. & Inst. Code, § 366.21, subd. (f).)

The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The fail-

ure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of section 366. (Welf. & Inst. Code, § 366.21, subd. (f).)

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services: (1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a pre-adoptive home; (2) The case plan includes services to achieve permanent placement for the child if efforts to reunify fail; (3) Services to achieve permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family. (Welf. & Inst. Code, § 366.21, subd. (l).) Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of section 366. (Welf. & Inst. Code, § 366.21, subd. (f).)

If a time period in which the court ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2) or (3) of subdivision (a) of section 361.5, as appropriate, and a child is not returned to the custody of a parent or guardian at the permanency hearing held pursuant to subdivision (f),

the court shall do one of the following (Welf. & Inst. Code, § 366.21, subd. (g).):

- (1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:
  - (A) That the parent or guardian has consistently and regularly contacted and visited with the child.
  - (B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.
  - (C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs. The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to section 366.26 may be instituted. The court shall not order that a hearing pursuant to section 366.26

be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

- (2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.
- (3) Order that a hearing be held within 120 days, pursuant to section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or guardians.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

- (A) The child has been placed with a foster family that is eligible to

adopt a child, or has been placed in a pre-adoptive home.

- (B) The case plan includes services to achieve a permanent placement for the child if efforts to reunify fail.
- (C) Services to achieve a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family. (Welf. & Inst. Code, § 366.21, subd. (g).)

## **18-Month Permanency Hearing**

When a case has been continued pursuant to section 366.21 above, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or guardian (the date the child was originally placed into protective custody or ordered removed, whichever was earlier). The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of section 366. (Welf. & Inst. Code, § 366.22, subd. (a).)

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services: (1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a pre-adoptive home; (2) The case plan includes services to achieve a permanent placement for the child if efforts to reunify fail; (3) Services to achieve a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family. (Welf. & Inst. Code, § 366.22, subd. (a).)

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. (Welf. & Inst. Code, § 366.22, subd. (a).)

If the child is not returned to a parent or guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of section 366.21, for determining that a hearing held under section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services

to the parent or guardian. The court shall continue to permit the parent or guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian. (Welf. & Inst. Code, § 366.22, subd. (a).)

## **Selection and Implementation Hearing**

If the child is not returned to the parent or guardian and the court terminates reunification services, the court must select and implement a permanent plan. The court shall order that a selection and implementation hearing be held pursuant to section 366.26 in order to determine whether adoption, guardianship or long-term foster care is the most appropriate permanent plan for the child. The hearing shall be held within 120 days of the date that the court terminated reunification services (or ordered that no services be provided pursuant to section 361.5, subd. (b)). (Welf. & Inst. Code, § 366.22.) The parents are entitled to receive personal notice (or through certified mail) for this hearing. (Welf. & Inst. Code, § 294.)

In order to comply with the federal Adoption and Safe Families Act of 1997 (ASFA) (P.L. 105 89) and state Assembly Bill 2773 (Stats. 1998, ch. 1056), for every child who is in foster care, or who enters foster care, on or after January 1, 1999, and has been in foster care for 15 of the most recent 22 months, the social worker shall submit to the court a recommendation that the court set a hearing pursuant to section 366.26 for the purpose of terminating parental rights. The social worker shall concurrently initiate and describe a plan to identify, recruit, process and approve a qualified family for adoption of the child. The social worker is not required to submit such recommendation if any of the following applies: (1) The case plan for the child has documented a

compelling reason or reasons why it is unlikely that the child will be adopted, as determined by the department when it is acting as an adoption agency, or by the licensed adoption agency, and therefore termination of parental rights would not be in the best interest of the child or that one of the conditions set forth in paragraph (1) of subdivision (c) of section 366.26 applies; (2) A hearing under section 366.26 is already set; (3) The court has found at the previous hearing under section 366.21 that there is a substantial probability that the child will be returned to the child's home within the extended period of time permitted; (4) The court has found at the previous hearing under section 366.21 that reasonable reunification services have not been offered or provided; (5) The court has found at each and every hearing at which the court was required to consider reasonable efforts or services that reasonable efforts were not made or that reasonable services were not offered or provided. (Welf. & Inst. Code, § 16508.1.)

At the 366.26 hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall read and consider the social worker's assessment report, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

- (1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.
- (2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the

child within a period not to exceed 180 days.

- (3) Appoint a legal guardian for the child and order that letters of guardianship issue.
- (4) Order that the child be placed in long term foster care, subject to the periodic review of the juvenile court under section 366.3. (Welf. & Inst. Code, § 366.26, subd. (b).)

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c) of section 366.26, which provides:

- (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of section 366.21 or subdivision (b) of section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a pre-adoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted.

A finding under subdivision (b) or paragraph (1) of subdivision (e) of section 361.5 that reunification services shall not be offered, under subdivision (e) of section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under sections 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless

the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

- (A) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.
- (B) A child 12 years of age or older objects to termination of parental rights.
- (C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- (D) The child is living with a relative, foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative, foster parent, or Indian custodian would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a non-relative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.
- (E) There would be substantial interference with a child's sibling relation-

ship, taking into consideration the nature and extent of the relationship, including but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term, emotional interest, as compared to the benefit of legal permanence through adoption.

- (F) The child is an Indian child and there is compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to, (i) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights. (ii) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child. If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B) (C), (D) (E) or (F), it shall state its reasons in writing or on the record.
- (2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided. And in the case of an Indian child, the court found that active efforts were not made as required by Section 361.7 and that continued custody of the child by the parent is likely to result in

serious emotional or physical damage to the child.

- (3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.
- (4) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), (E) or (F) of paragraph (1) or in paragraph (2)

applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

- (5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there is no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare department regarding the suitability of the transfer. The transfer shall be subject to further court orders.

At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist: (1) The court determines that testimony in chambers is necessary to ensure truthful testimony; (2) The child is likely to be intimidated by a formal courtroom setting; (3) The child is afraid to testify in front of his or her parent or parents. After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parents or parents. The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision. (Welf. & Inst. Code, § 366.26, subd. (h).)

Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it (except as provided in paragraph 2 of this section, which states: "A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights...may petition the juvenile court to reinstate parental rights..."), but nothing in this section shall be construed to limit the right to appeal the order. (Welf. & Inst. Code, § 366.26, subd. (i).)

## **Hearing Subsequent to Permanent Plan**

Subsequent to the selection and implementation hearing (or subsequent to the six-month, 12-month or 18-month hearing if the court ordered long-term foster care), post-permanency reviews by an administrative board or

by the court are required no less frequently than every six months. (Welf. & Inst. Code, § 366.3.)

At the post-permanency hearing the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement; (2) Identification of individuals other than the child's siblings who are important to a child who is 10 years of age or older and has been in out-of-home placement for six months or longer from the date the child entered foster care, and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the child's best interest; (3) The continuing appropriateness and extent of compliance with the permanent plan for the child; (4) The extent of compliance with the child welfare services case plan; (5) Whether there should be any limitations on the right of the parent or guardian to make educational decisions for the child; (6) The adequacy of services provided to the child; (7) The extent of progress the parents or legal guardian have made toward alleviating or mitigating the causes necessitating placement in foster care; (8) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another permanent living arrangement; (9) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist: (A) The nature of the relationship between the child and his or her siblings; (B) The appropriateness of developing or maintaining the sibling relationship pursuant to section 16002. (Welf. & Inst. Code, § 366.3, subd. (e).)

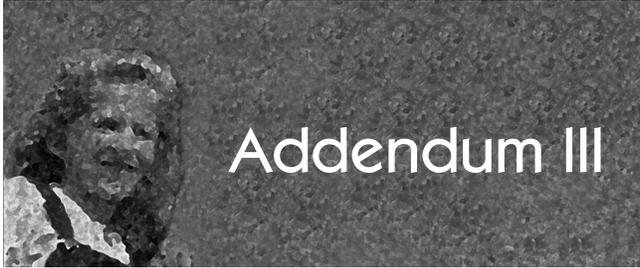
The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child. When the adop-

tion of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship. (Welf. & Inst. Code, § 366.3, subd. (a).)

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, the post-permanency hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months. (Welf. & Inst. Code, § 366.3, subd. (e).)

## **Dismissal of Dependency**

A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require the dismissal, and that the parent or guardian of the minor is not in need of treatment or rehabilitation. (Welf. & Inst. Code, § 390.) As a matter of practice, the judge normally dismisses a dependency case when the child reaches age 18, or the adoption is finalized, or letters of guardianship are issued, or the child becomes emancipated, or the child is adjudged a delinquent pursuant to Welfare and Institutions Code section 602.



# Crimes Against Children

The following are summaries of California Penal Code sections that do, or may, pertain to crimes against children. These crimes are “child abuse and neglect” within the meaning of the Child Abuse and Neglect Reporting Act, and they must be reported.

## **Neglect**

### **Penal Code Section 270. Failure to Provide — summarized.**

If a parent of a minor willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter, or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding \$2,000, or by imprisonment in the county jail not exceeding one year, or by both.

If a parent has notice of a final adjudication in either a civil or criminal action that he or she is the parent of a minor child and then willfully omits without lawful excuse to furnish necessary clothing, food, shelter, medical attendance, or other remedial care for his or her child, this conduct is punishable by imprisonment in the county jail for a period not exceeding one year or in a state prison for a determinate term of one year and one day, or by a fine not exceeding \$2,000, or by both. A parent who fails to provide the care required by this section is not relieved of liabil-

ity merely because the other parent is entitled to legal custody or because any other person or organization furnishes care.

If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute “other remedial care” as used in section 270. (See also Pen. Code, § 11165.2, subd. (b).) Section 270 does not, however, create an exemption from felony prosecution for involuntary manslaughter and felony child endangerment of those parents who continue to furnish prayer alone in the rare instance when a gravely ill child lies dying for want of medical attention. (*Walker v. Superior Court* (1988) 47 Cal.3d 112, 120-129.)

## **Willful Cruelty, Child Endangerment, Corporal Punishment**

### **Penal Code Section 273a. Willful Cruelty or Child Endangerment — summarized.**

- (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 his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in state prison for two, four, or six 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 his or her person or health may be endangered, is guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than six months or a fine of up to \$1,000, or by both.

### **Penal Code Section 273d. Unlawful Corporal Punishment or Injury — summarized.**

Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years, or in the county jail for not more than one year or by fine of up to \$6,000, or by both. EXCEPTIONS: For purposes of the Child Abuse and Neglect Reporting Act, “unlawful corporal punishment or injury” does not include an amount of force that is reasonable and necessary for a person

employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of a pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. And finally, it 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. (Pen. Code, §11165.4.)

## **Sexual Assault**

### **Penal Code Section 261. Rape — summarized.**

Rape is an act of sexual intercourse with a victim who is not the spouse of the perpetrator, under any of the following circumstances:

- (1) when the victim is incapable of giving consent because of a mental disorder or developmental or physical disability, and this is known or reasonably should be known to the perpetrator;
- (2) when the victim’s will is overcome by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another;
- (3) when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition is known or reasonably should be known by the perpetrator;
- (4) when the victim is at the time unconscious of the nature of the act, and this is known to the perpetrator;
- (5) when the victim is intentionally deceived by the perpetrator into believing that the perpetrator is his or her spouse;

- (6) when the victim's will is overcome by threats to kidnap, falsely imprison, or to inflict extreme pain, serious bodily injury or death upon the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat;
- (7) when the victim's will is overcome by the perpetrator's threats to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.

This crime is a felony, punishable by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 264, subd. (a).)

**Penal Code Section 261.5, Subdivision (d). Unlawful Sexual Intercourse — summarized.**

Unlawful sexual intercourse includes an act of sexual intercourse between 21 years of age or older and a minor who is under 16 years of age. This crime is punishable by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison for two, three, or four years.

**Penal Code Section 264.1. Rape or Penetration of a Genital or Anal Opening by a Foreign Object While Acting in Concert — summarized.**

Rape or penetration of a genital or anal opening by a foreign object while acting in concert is defined as voluntarily acting in concert with another person, by force or violence and against the will of the victim, to commit an act of rape, rape of a spouse, or penetration of a genital or anal opening by a foreign object, either personally or by aiding and abetting the other person. This felony is pun-

ishable by imprisonment in the state prison for five, seven, or nine years.

**Penal Code Section 285. Incest — summarized.**

Incest is a marriage or act of intercourse between two persons who are 14 years of age or older and are related as follows: parents and children; ancestors and descendants of every degree; brothers and sisters of half and whole blood; and uncles and nieces or aunts and nephews. (Fam. Code, § 2200.) This felony is punishable by imprisonment in the state prison for 16 months, two years, or three years.

**Penal Code Section 286. Sodomy — summarized.**

Sodomy is contact between the penis of one person and the anus of another person, and it is punishable as a misdemeanor or as a felony, as follows:

- (1) if the victim is under 18 years of age, imprisonment in state prison for 16 months, two years, or three years, or in county jail for a period not to exceed one year;
- (2) if the victim is under 16 years of age and the perpetrator is over 21 years of age, imprisonment in state prison for 16 months, two years, or three years;
- (3) if the victim is under 14 years of age and the perpetrator is at least 10 years older than the victim, imprisonment in state prison for three, six, or eight years;
- (4) if the victim's will is overcome by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or fear of retaliation against the victim or another person where it is reasonably likely the perpetrator will execute the

threat, imprisonment in state prison for three, six, or eight years;

- (5) if two or more persons act in concert and the victim's will is overcome by means of force, fear of immediate and unlawful bodily injury on the victim or another person, or fear of retaliation against the victim or another person, where it is reasonably likely the perpetrator will execute the threat, imprisonment in state prison for five, seven, or nine years;
- (6) if the act occurs while the perpetrator is confined in a state prison or in any local detention facility, imprisonment in state prison for 16 months, two years, or three years, or in county jail for not more than one year;
- (7) if the victim is at the time unconscious of the nature of the act and this is known to the perpetrator, imprisonment in state prison for three, six, or eight years;
- (8) if the victim is at the time incapable, due to mental disorder or developmental or physical disability, of giving legal consent, and this is known or should be known by the perpetrator, imprisonment in state prison for three, six, or eight years;
- (9) if the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the perpetrator, and both the victim and the perpetrator are confined in a facility for the care and treatment of the mentally disordered, imprisonment in the state prison for 16 months, two years, or three years, or in county jail for not more than one year;
- (10) if the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance,

and this condition is known or reasonably should be known by the perpetrator, imprisonment in the state prison for three, six, or eight years;

- (11) if the victim is deceived by the perpetrator into believing that the perpetrator is his or her spouse, imprisonment in the state prison for three, six, or eight years;
- (12) if the victim's will is overcome by the perpetrator's threats to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, imprisonment in the state prison for three, six, or eight years.

### **Penal Code Section 288, Subdivisions (a), (b), and (c)(1). Lewd and Lascivious Acts With a Child — summarized.**

Lewd and lascivious acts with a child include any touching of a child under the age of 14 years by either the perpetrator or by the child at the direction of the perpetrator for the purpose of arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator or the child. This offense is punishable as a felony as specified:

- (1) if the child is under the age of 14 years, imprisonment in state prison for three, six, or eight years and a fine of up to \$10,000 (Pen. Code, § 288, subd. (a));
- (2) if the child is under the age of 14 years and the perpetrator uses force, violence, duress, menace, or threat of immediate and unlawful bodily injury to the child or another person, imprisonment in state prison for three, six, or eight years and a fine of up to \$10,000 (Pen. Code, § 288, subd. (b)).

Lewd and lascivious acts with a child also include any touching of a child 14 or 15 years of age by either the perpetrator or by the child at the direction of the perpetrator for the purpose of arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator or the child when the perpetrator is at least 10 years older than the child. This offense is punishable by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year (Pen. Code, § 288, subd. (c)(1)).

### **Penal Code Section 288a. Oral Copulation — summarized.**

Oral copulation is an act of copulating the mouth of one person with the sexual organ or anus of another person, and it is punishable as specified:

- (1) if the victim is under 18 years of age, imprisonment in the state prison for 16 months, two years, or three years, or in county jail for not more than one year;
- (2) if the victim is under 16 years of age and the perpetrator is over 21 years of age, imprisonment in state prison for 16 months, two years, or three years;
- (3) if the victim is under 14 years of age and the perpetrator is more than 10 years older than the victim, imprisonment in state prison for three, six, or eight years;
- (4) if the victim's will is overcome by means of force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or fear of retaliation against the victim or another person where it is reasonably likely the perpetrator will execute the threat, imprisonment in state prison for three, six, or eight years;
- (5) if two or more persons act in concert and (a) the victim's will is overcome by means of force or fear of immediate and unlawful bodily injury on the victim or another person; or (b) the victim's will is overcome by fear of retaliation against the victim or another person, where it is reasonably likely the perpetrator will execute the threat; or (c) the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving legal consent and this is known or reasonably should be known to the perpetrator, imprisonment in state prison for five, seven, or nine years;
- (6) if the act occurs while the perpetrator is confined in a state prison or in any local detention facility, imprisonment in state prison for 16 months, two years, or three years, or in county jail for not more than one year;
- (7) if the victim is at the time unconscious of the nature of the act and this is known to the perpetrator, imprisonment in state prison for three, six, or eight years;
- (8) if the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the perpetrator, imprisonment in state prison for three, six, or eight years;
- (9) if the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the perpetrator, and both the victim and the perpetrator are confined in a facility for the care and treatment of the mentally disordered, imprisonment in state prison for 16 months, two years, or three years, or in county jail for not more than one year;

- (10) if the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition is known or reasonably should be known by the perpetrator, imprisonment in the state prison for three, six, or eight years;
- (11) if the victim is deceived by the perpetrator into believing that the perpetrator is his or her spouse, imprisonment in the state prison for three, six, or eight years;
- (12) if the victim's will is overcome by the perpetrator's threats to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, imprisonment in the state prison for three, six, or eight years.

**Penal Code Section 289. Penetration of a Genital or Anal Opening by a Foreign Object — summarized.**

Penetration of a genital or anal opening by a foreign object is the slightest penetration of the genital or anal opening of the victim, or causing the victim to so penetrate the perpetrator's or another person's genital or anal opening, using any foreign object, substance, instrument, or device, including any part of the body except a sexual organ, or by any unknown object, for the purpose of sexual arousal, gratification, or abuse, and it is punishable as specified:

- (1) if the victim's will is overcome by means of force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or fear of retaliation against the victim or another person where it is reasonably likely the perpetrator will execute the threat, imprisonment in state prison for three, six, or eight years;

- (2) if the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the perpetrator, imprisonment in state prison for three, six, or eight years;
- (3) if the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the perpetrator, and both the victim and the perpetrator are confined in a facility for the care and treatment of the mentally disordered, imprisonment in the state prison for 16 months, two years, or three years, or in county jail for not more than one year;
- (4) if the victim is at the time unconscious of the nature of the act and this is known to the perpetrator, imprisonment in state prison for three, six, or eight years;
- (5) if the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition is known or reasonably should be known by the perpetrator, imprisonment in the state prison for three, six, or eight years;
- (6) if the victim is deceived by the perpetrator into believing that the perpetrator is his or her spouse, imprisonment in the state prison for three, six, or eight years;
- (7) if the victim's will is overcome by the perpetrator's threats to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, imprisonment in the state prison for three, six, or eight years;

- (8) if the victim is under 18 years of age, imprisonment in the state prison for 16 months, two years, or three years, or in county jail for not more than one year;
- (9) if the victim is under 16 years of age and the perpetrator is over 21 years of age, imprisonment in state prison for 16 months, two years, or three years;
- (10) if the victim is under 14 years of age and the perpetrator is more than 10 years older than the victim, imprisonment in state prison for three, six, or eight years.

### **Penal Code Section 647.6 Child Molestation — summarized.**

Child molestation is any act that annoys or molests a child and is motivated by an unnatural or abnormal sexual interest in children, which act would reasonably be expected to disturb, irritate, trouble, or offend the victim, whether or not the victim is so affected. (People v. Kongs (1994) 30 Cal.App.4th 1741, 1749-1750.) This offense, which requires no touching of the victim, is punishable as follows:

- (1) if the victim is under 18 years of age, imprisonment in the county jail for not more than one year or a fine not exceeding \$5,000, or by both;
- (2) if the act occurs after the perpetrator enters, without consent, an inhabited dwelling house, a trailer coach, or the inhabited portion of any other building, imprisonment in the state prison for 16 months, two years, or three years, or in county jail for a period not exceeding one year, and a fine not exceeding \$5,000.
- (3) if the perpetrator violates this section after a previous misdemeanor conviction under this section, imprisonment

in the state prison for 16 months, two years, or three years;

- (4) if the perpetrator violates this section after a previous felony conviction under Penal Code sections 261, 264.1, 269, 285, 286, 288a, 288.5, or 289 involving a minor under the age of 16 years or a previous felony conviction under this section, Penal Code section 288, or Penal Code section 311.4 involving a minor under the age of 14 years, imprisonment in the state prison for two, four, or six years.

**NOTE:** Although the Child Abuse and Neglect Reporting Act does not specifically require reporting of other sexual offenses, such as assault with intent to commit rape and attempted rape, those crimes must be reported if the conduct falls within any one of the statutes discussed above. (See also Pen Code, § 11165.1, subd. (b).)

## **Sexual Exploitation**

### **Penal Code Section 311.2. Obscene Matter and Matter Depicting Sexual Conduct by a Minor — summarized.**

Penal Code section 311.2, subdivision (a), prohibits the following activities regarding any obscene matter, meaning matter which, taken as a whole, to the average person and applying contemporary statewide standards, appeals to the prurient interests, and which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and lacks serious literary, artistic, political or scientific value (Pen Code, § 311, subd. (a)):

- (1) knowingly importing into the state for sale or distribution;
- (2) knowingly possessing, preparing, publishing, producing, or printing, with the intent to distribute or exhibit to others;

- (3) knowingly offering to distribute or distributing to others;
- (4) knowingly exhibiting to others.

A violation of Penal Code section 311.2, subdivision (a), is punishable as a misdemeanor by a maximum fine of \$10,000 or a term of imprisonment in the county jail for up to 360 days, or by both. If the person has previously been convicted of one or more specified crimes relating to obscene or harmful matter, the crime is punishable as a felony by a term of imprisonment of 16 months, 2 years, or 3 years, and by a fine not exceeding \$50,000. (Pen. Code, § 311.9.)

Penal Code section 311.2, subdivision (b), prohibits the following activities with any obscene matter that the person knows depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct:

- (1) knowingly importing into the state for sale or distribution, with the intent to distribute to, exhibit to, or exchange with, others for commercial consideration;
- (2) knowingly possessing, preparing, publishing, producing, printing, developing, or duplicating, with the intent to distribute to, exhibit to, or exchange with, others for commercial consideration;
- (3) knowingly offering to distribute or distributing to others for commercial consideration;
- (4) knowingly exhibiting to, or exchanging with, others for commercial consideration.

A violation of Penal Code section 311.2, subdivision (b), is punishable as a felony by imprisonment in state prison for two, three, or six years or by a fine not exceeding \$100,000, or by both.

Penal Code section 311.2, subdivision (c), prohibits the following activities with any matter that the person knows depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct:

- (1) knowingly importing into the state for sale or distribution, with the intent to distribute to, exhibit to, or exchange with, a person 18 years of age or older;
- (2) knowingly possessing, preparing, publishing, producing, printing, developing, or duplicating, with the intent to distribute to, exhibit to, or exchange with, a person 18 years of age or older;
- (3) knowingly offering to distribute, distributing, exhibiting to, or exchanging with, a person 18 years of age or older.

A violation of Penal Code section 311.2, subdivision (c), is punishable as a misdemeanor by imprisonment in the county jail for up to one year, or by a fine not exceeding \$2,000, or by both or as a felony by imprisonment in state prison for 16 months, two years, or three years. If the person has previously been convicted of a violation of this subdivision, the crime is punishable as a felony by a term of imprisonment of 16 months, 2 years, or 3 years. (Pen. Code, § 311.9.)

Penal Code section 311.2, subdivision (d) prohibits the following activities with any matter that the person knows depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct:

- (1) knowingly importing into the state for sale or distribution, with the intent to distribute to, exhibit to, or exchange with, a person under 18 years of age;
- (2) knowingly possessing, preparing, publishing, producing, printing, developing, or duplicating, with the intent to distribute to, exhibit to, or exchange with, a person under 18 years of age;

- (3) knowingly offering to distribute, distributing, exhibiting to, or exchanging with, a person under 18 years of age.

A violation of Penal Code section 311.2, subdivision (d) is punishable as a felony, by imprisonment in state prison for 16 months, two years, or three years.

This section does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities. It also does not apply to matter that depicts a child under the age of 18 years who is legally emancipated or to lawful conduct between spouses when one or both are under the age of 18 years.

### **Penal Code Section 311.3. Sexual Exploitation of a Child — summarized.**

Penal Code section 311.3 prohibits the knowing development, duplication, printing, or exchange of any film, photograph, videotape, negative, slide, CD-Rom, or other representation of information, data, or image depicting a child under 18 years of age engaged in specified sexual conduct.

A first offense is punishable as a misdemeanor by imprisonment in the county jail for not more than one year or a fine of up to \$2,000, or by both. If the person has previously been convicted of this crime or specified crimes relating to obscene matter, the crime is punishable as a felony by imprisonment in state prison for 16 months, two years, or three years.

This section does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities or to lawful conduct

between spouses. It also does not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided the employee has no financial interest in the commercial developer by which he or she is employed.

### **Penal Code Section 311.4, Subdivision (a). Employment of a Minor to Perform Prohibited Acts — summarized.**

Penal Code section 311.4, subdivision (a), prohibits the hiring, employment, or use of a person who is known to be, or reasonably should be known to be, a minor, to do or to assist in any act in violation of Penal Code section 311.2 (described above).

A violation of Penal Code section 311.4, subdivision (a), is punishable as a misdemeanor by imprisonment in the county jail for not more than one year or a fine of up to \$2,000, or by both or as a felony by imprisonment in state prison for 16 months, two years, or three years. (Pen. Code, § 311.9.) If the person has previously been convicted of a violation of Penal Code section 311.4 or Penal Code section 311.3, he or she is guilty of a felony, punishable by imprisonment in state prison for 16 months, two years, or three years. (Pen. Code, § 311.9.) In addition, if he or she has previously been convicted of a violation of Penal Code section 311.4, the court may impose a fine not exceeding \$50,000.

**NOTE:** The Child Abuse and Neglect Reporting Act also requires the reporting of additional acts of child exploitation, defined as follows:

Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who

knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. (Pen. Code, § 11165.1, subd. (c)(2).)



# Guidelines for Investigation of Child Abuse in Out-Of-Home Care Facilities

## **Title 11, California Code of Regulations, Sections 930-930.70.**

**NOTE:** These sections are current through Register 2007, No. 5, February 2, 2007.

### **930. Scope.**

This article shall apply to the investigation of suspected child abuse in out-of-home care facilities reported under section 11166 of the Penal Code. The guidelines shall be applicable when the abuse reported is child abuse as defined in section 11165.5 of the Penal Code.

### **930.10. Purpose.**

(a) The purpose of these guidelines is:

- (1) to insure that investigations of suspected child abuse occurring in out-of-home care facilities are carried out in a timely, complete, and coordinated manner among the responsible agencies;
- (2) to require that the appropriate agency conducts the investigation in accordance with the guidelines;
- (3) to insure that all appropriate authorities are informed so that timely and appropriate measures will be taken to guard against future abuse in out-of-home care facilities;

(4) to insure that the investigation is sensitive to the child victim(s); and

(5) to properly document reasons for any disposition made.

(b) The intent of these guidelines is to foster a high level of cooperation, communication, and mutual respect among all agencies involved in the investigation and administration of cases of abuse in out-of-home care facilities.

### **930.20. Use of Guidelines.**

(a) The guidelines set forth in this article shall be used in the investigation of suspected child abuse in out-of-home care facilities as defined in Penal Code section 11165.5.

(b) Voluntary Inter-Agency Investigation Teams-Counties having a Voluntary Inter-Agency Investigation team shall have the discretion to follow the procedures and standards for assessment and investigation of child abuse which are established and agreed upon by the agencies involved, if they are consistent with the guidelines in sections 930.40 through 930.64 of this article, and all cross reports and notifications required therein are made.

### 930.30. Definitions.

For the purpose of this article, the following glossary of terms shall apply whenever the following terms are used:

- (a) "Child" means a person who is under 18 years of age.
- (b) "Child abuse" means serious abuse and general neglect.
  - (1) "General neglect" means the negligent failure of a child care provider to provide adequate food, clothing, shelter, medical care or supervision where no physical injury has occurred.
  - (2) "Serious abuse" means all sexual abuse, severe neglect as defined in Penal Code section 11165.2, subdivision (a), any act or omission proscribed by Penal Code section 273a or 273d, and/or any infliction of a non-accidental physical injury on a child. Mutual affrays or voluntary consensual sexual exploration between children of similar age do not constitute child abuse.
- (c) "Child Abuse Reporting Law" means Penal Code section 11164, et seq.
- (d) "Child Placement Agency" means any agency, public or private, authorized to engage in finding homes or other facilities for the placement of children for temporary or permanent care or adoption, including but not limited to probation departments, county welfare departments, adoption agencies, and agencies that place children with mental or developmental special needs.
- (e) "Child Protective Agency" means a police or sheriff's department, a county probation department, or a county welfare department.
- (f) "Child Welfare Agency" means a county probation or county welfare department, whichever of the two departments has responsibility for taking a minor into temporary custody and/or placing the child in temporary or permanent care.
- (g) "Complaint" means any allegation that a statute or regulation of this state has been violated.
- (h) "Exempt Facility" means a facility not required by law to be licensed.
- (i) "Infant" means a child who is under two years of age.
- (j) "Investigation" means any activity by a child protective agency or licensing agency in response to a complaint or report of suspected child abuse including: required reporting; assessing the nature and seriousness of the abuse; conducting interviews; gathering and preserving evidence; determining whether the report is unfounded; taking measures to ensure the safety of the children; notification of action taken, or disposition after completion of the investigation, as required by this article; notifying mandated reporters and all appropriate agencies of the results of the investigation, of any formal or informal action taken by the appropriate agency, and of the final disposition.
- (k) "Investigator" means any personnel from a child protective or licensing agency who conducts an investigation of a report or complaint of child abuse in an out-of-home care facility.
- (l) "Law Enforcement Agency" means a police or sheriff's department, whichever of the two departments has jurisdiction.
- (m) "Licensing Agency" means any agency authorized to issue, revoke or suspend the license of an out-of-home care facility and includes the State Department of Social Services, Community Care Licensing Division, the county agency which has contracted with the State Department of Social Services for performance of those duties, and the state Department of Health Services.
- (n) "Licensed Facility" means any facility required by law to be licensed whether presently licensed or not.

- (o) "Mandated Reporter" means any person required to report child abuse pursuant to Penal Code section 11166.
- (p) "Out-Of-Home Care Facility" means any agency, institution, facility, shelter, center, school, camp, home, or hospital, which is responsible for a child's care and welfare and includes but is not limited to:
  - (1) "Family Day Care Home" means a facility which regularly provides care, protection and supervision to 12 or fewer children in the provider's own home, for periods of less than 24 hours per day, while the parent or guardian, is away, except as provided in Health and Safety Code section 1597.41, and includes:
    - (A) Large Family Day Care Home — a home which provides family day care to 7 to 12 children, inclusive, including children under the age of 10 years who reside at the home;
    - (B) Small Family Day Care Home — a home, which provides family day care to six or fewer children, including children under the age of 10 years who reside at the home;
  - (2) "Child Day Care Facility" means any facility which provides less than 24 hour non medical care, protection and supervision for children and includes infant centers, preschools, day care centers, family day care homes, and extended day care facilities.
  - (3) "Foster Family Home" means any residential facility which provides 24 hour care and supervision for six or fewer foster children in the residence of the foster parent(s), including their own family, in whose care the foster children have been placed;
  - (4) "Small Family Home" means any residential facility which provides 24 hour care to six or fewer foster children who have mental disorders or development or physical disabilities and who require special care and supervision as result of their disability or handicap;
- (5) "Group Home or Institution" means any residential facility of any capacity providing 24hour non-medical care and supervision for children in a structured environment with such services provided at least in part by staff employed by the licensee;
- (6) Juvenile Hall;
- (7) Public or Private schools;
- (8) California Youth Authority.
- (q) "Primary Agency" means the investigating agency that has primary responsibility for conducting the investigation.
- (r) "Reporting Party" means the person(s) initially reporting the abuse under Penal Code section 11166.
- (s) "Residential Facility" means any family or group home which provides 24 hour non-medical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.
- (t) "State Funded Resource and Referral Agency" means a resource and referral agency funded under Education Code section 8210.
- (u) "Unfounded Report" means a report of child abuse which, after investigation, is determined to be false, inherently improbable, (i.e., patently false or physically impossible), to involve an accidental injury, or not to constitute child abuse as defined in Penal Code section 11165.5. Alternative explanations for the alleged abuse or mere conflicts in statements of the victim and/or other witnesses are not adequate alone for a determination that a report is unfounded.
- (v) "Voluntary Inter-Agency Investigation Team" means a local voluntary association of law enforcement agencies, county welfare and

Probation departments, child placement agencies, and state or county licensing agencies established for the sharing of information and coordination of investigations of reports of child abuse occurring in out-of-home care facilities.

### **930.40. Reporting and Cross-Reporting Duties for General Neglect**

- (a) Law Enforcement — All reports of suspected general neglect made to a law enforcement agency and alleged to have occurred in an out-of-home care facility shall be cross-reported by the law enforcement agency to the following agencies:
  - (1) Child Welfare Agency — by telephone, immediately, or as soon as is practically possible, and in writing within 36 hours to the child welfare agency.
  - (2) Licensing Agency — by telephone, immediately, or as soon as is practically possible, but no later than 24 hours, and in writing within 36 hours to the appropriate licensing agency, if the case involves a licensed facility.
- (b) Child Welfare Agency — All reports of suspected general neglect made to a child welfare agency and alleged to have occurred in an out-of-home care facility shall be cross-reported by telephone, immediately, or as soon as is practically possible, but no later than 24 hours, and in writing, within 36 hours, to the appropriate licensing agency, if the case involves a licensed facility, or to the appropriate law enforcement agency if the facility involved is an exempt facility.
- (c) Licensing Agency — any licensing worker or evaluator who knows or reasonably suspects that a child has been the victim of general neglect, in an out-of-home care facility shall report the known or suspected abuse by telephone, immediately,

or as soon as is practically possible, and in writing, within 36 hours, to the appropriate child welfare agency, or if the facility involved is an exempt facility, to a law enforcement agency.

### **930.41. Reporting and Cross-Reporting Duties for Serious Child Abuse**

- (a) Law Enforcement — All reports of suspected serious child abuse made to a law enforcement agency and alleged to have occurred in an out-of-home facility shall be cross-reported by the law enforcement agency to the following agencies:
  - (1) Child Welfare Agency — by telephone, immediately or as soon as practically possible, and in writing, within 36 hours, to the child welfare agency;
  - (2) Licensing Agency — by telephone, immediately or as soon as is practically possible, but no later than 24 hours, and in writing, within 36 hours, to the appropriate licensing agency if the case involves a licensed facility;
  - (3) District Attorney's Office — by telephone, immediately or as soon as is practically possible, and in writing, within 36 hours, to the district attorney's office;
- (b) Child Welfare Agency — All reports of suspected serious child abuse made to a child welfare agency and alleged to have occurred in an out-of-home care facility shall be cross-reported by the child welfare agency to the following agencies:
  - (1) Law Enforcement — by telephone, immediately or as soon as is practically possible, and in writing, within 36 hours, to law enforcement.
  - (2) Licensing Agency — by telephone, immediately or as soon as is practically possible, but no later than 24 hours,

and in writing, within 36 hours, to the appropriate licensing agency if the case involves a licensed facility;

- (3) District Attorney's Office — by telephone, immediately or as soon as is practically possible, and in writing, within 36 hours, to the district attorney's office;
- (c) Licensing Agency — Any licensing worker or evaluator who knows or reasonably suspects that a child has been the victim of serious abuse in an out-of-home care facility shall report by telephone, immediately or as soon as is practically possible, and in writing, within 36 hours, to the appropriate law enforcement agency.

### **930.42. Notification Requirements**

If child abuse is suspected to have occurred in an out-of-home care facility, and the report is not initially determined to be unfounded, the investigating agency shall, or in the case of a state funded resource and referral agency, the Department of Social Services shall, without compromising the security and confidentiality of the investigation, notify the following agencies and persons as soon as is reasonably practical (i.e., taking into consideration the nature, size, and complexity of the investigation and the need to maintain the security and confidentiality of the investigation) that an investigation of alleged child abuse is being conducted:

- (a) Child Placement Agency or probation department, whichever placed the child(ren) in the facility, including cases where the child is placed outside the county;
- (b) State Funded Resource and Referral Agency for that jurisdiction, within 24 hours of a finding, based on the preliminary investigation of physical or sexual abuse, as long as disclosure does not violate sanctions against dissemination of confidential information as provided in Penal Code sections 11167 and 11167.5;
- (c) Administrator of the facility, as long as disclosure does not violate sanctions against dissemination of confidential information as provided in Penal Code sections 11167 and 11167.5;
- (d) Parent or guardian, if the child is not a dependent or ward of the court; if the child is a dependent child or ward of the court, the child placement agency shall determine whether or not to inform the child's parent or guardian of the alleged abuse.

### **930.43. Follow-Up Reporting Requirements**

If child abuse is suspected to have occurred in an out-of-home care facility, all agencies and persons listed below shall be notified in writing by the investigating agency of the results of the investigation, any action taken, whether the action be formal or informal, and the final disposition of the matter:

- (a) Department of Justice, Division of Law Enforcement, except that reports of general neglect shall not be made,
- (b) District Attorney's Office,
- (c) Child Placement Agency involved,
- (d) Child Welfare Agency,
- (e) Licensing Agency with jurisdiction over the facility,
- (f) Administrator of the facility, as long as disclosure does not violate sanctions against dissemination of confidential information as provided in Penal Code sections 11167 and 11167.5;
- (g) Parent or guardian of the child, if the child is not a dependent or ward of the court,
- (h) Mandated Reporter,
- (i) State Funded Resource and Referral Agency for that jurisdiction, when physical or sexual abuse has occurred, as long as dis-

closure does not violate sanctions against dissemination of confidential information as provided in Penal Code sections 11167 and 11167.5.

#### **930.44. Unfounded Reports.**

If a report of suspected child abuse in an out-of-home care facility is determined to be unfounded, the investigating agency shall inform the following agencies of that fact, if a cross-report has already been made to the agency:

- (a) Department of Justice;
- (b) Child Protective agencies;
- (c) Licensing Agency, if the facility being investigated is a licensed facility.

#### **930.50. Share Information**

All agencies involved in the investigation of child abuse in out-of-home care facilities shall, to the extent authorized by law, share all relevant evidence.

#### **930.51. Law Enforcement.**

- (a) Investigate — Law enforcement shall investigate the following types of abuse:
  - (1) Serious Abuse — Law enforcement shall have the primary responsibility for conducting criminal investigations of serious abuse.
  - (2) General Neglect — Law enforcement shall have the primary responsibility in exempt facilities for conducting and initial assessment of the allegations of neglect, and shall determine whether the alleged abuse is severe or general neglect. If it is determined that the alleged abuse is neglect, law enforcement shall notify the proper authority with supervisory authority over the exempt facility.
- (b) Law enforcement shall ensure the immedi-

ate safety of the child by taking the following action:

- (1) Preliminary Assessment — Law enforcement shall conduct a preliminary assessment of the risk to the children involved.
- (2) Safety Measures — Upon receipt of a report of suspected serious abuse, the investigating law enforcement officer shall take immediate measures as needed to protect the safety of the alleged child victim and all other children in the facility.
- (3) Removal of the Child — Whenever the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare, the investigating law enforcement officer shall remove the child and any other child whose welfare reasonably appears to be threatened. When a child is removed, notice of the removal shall be given to the child care provider in charge, prior to or immediately after removal.
  - (A) Residential Facility or Hospital — If the facility is a residential facility or hospital, the officer shall remove the child and transport him/her to temporary custody.
  - (B) Child Day Care Facility — If the facility is a child day care facility, the officer shall obtain a parent/guardian roster from the facility, as provided by Health & Safety Code section 1596.876, or from licensing officials, and shall notify and advise the parent/guardian to remove his/her child from the facility. If the parent/guardian is not available and the child is in immediate danger, the officer shall remove and transport the child to temporary custody and notify the parent/guardian.
- (4) Removal of the Suspect

- (A) If probable cause to arrest exists, the suspect shall be taken into custody where appropriate.
- (B) If probable cause to arrest does not exist and the adult suspected of child abuse is not a resident of the out-of-home care facility, the investigator shall, in the exercise of his/her discretion, request that the adult suspect leave the out-of-home care facility voluntarily until the investigation is completed. In the case of a family day care home or foster family home, where the suspect is a resident, safety measures shall be taken to ensure protection of the children in the facility. The investigator shall also have discretion to remove from the out-of-home care facility any child suspected of child abuse. Removal of the child suspect shall be accomplished by the law enforcement officer, the child placement agency, court order, or in cooperation with that child's parent or guardian, whichever is appropriate.
- (c) Coordinate — Law enforcement shall coordinate the investigation as follows:
  - (1) Joint investigations — The investigating law enforcement officer shall consider a joint investigation and coordinate the criminal investigation and response with the licensing and child welfare agencies to the extent possible, and without compromising the security and confidentiality of the case.
  - (2) Joint interviews — The investigating law enforcement officer shall coordinate with the other agencies involved in the investigation to minimize the number of interviews with the child abuse victims and witnesses.
  - (3) Multi-Disciplinary Team Approach — When a report of serious abuse in an

out-of-home care facility is made, the law enforcement agency with primary responsibility for the investigation shall consider working with a multi-disciplinary team to assess the medical, mental health, placement, and support service needs of the child(ren). A multi-disciplinary team is any team of three or more persons qualified to provide a broad range of services related to child abuse. The team may include, but not be limited to, representatives from child welfare services, law enforcement, the district attorney's office, county counsel's office, licensing, child advocate's office, medical health services, mental health services trained to provide counseling services, and education.

### **930.52. Child Welfare Agency**

- (a) Protect the Child — The child welfare agency shall take the following measures to protect the child:
  - (1) Removal of the Child — In cases of general neglect, the child welfare agency shall remove the child(ren) from the facility, immediately or as soon as possible, where the child(ren)'s condition or surroundings reasonable appear to jeopardize the child(ren)'s health and welfare. When a child is removed, notice of the removal shall be given to the child care provider in charge, prior to, or immediately after removal.
  - (2) Ensure Continued Safety — In all cases of child abuse, the child welfare agency shall take the necessary measures to ensure the child(ren)'s safety while the child(ren) is/are in temporary custody.
- (b) Placement Recommendation — The child welfare or placement agency that placed the child in the out-of-home care facility, shall make a placement recommendation. This agency shall be responsible for making an assessment and recommendation

regarding the need for continued protective custody, the revocation of placement or alternative placement, and any other proper judicial relief which is warranted.

- (c) Coordinate — The child welfare or placement agency that placed the child in the out-of-home care facility, shall also make every effort to coordinate its assessment with the appropriate law enforcement and licensing agencies. When a child welfare agency, receives an initial report of serious abuse, the child welfare worker shall immediately contact law enforcement and the licensing agency to coordinate efforts before contact of home care facility.

### **930.53. Licensing Agency**

- (a) Investigate complaints and general neglect — The appropriate licensing agency shall conduct an investigation whenever a report or complaint of suspected child abuse alleges general neglect or a violation of any statute, or regulation of this state, in a licensed out-of-home care facility. This investigation shall be done in accordance with the investigation procedures set forth in section 930.60, et seq., of this article.
  - (b) Coordinate and Cooperate — When suspected child abuse in a licensed out-of-home care facility is also being investigated or assessed by another agency, the licensing agency shall coordinate efforts with the other investigating agency(ies). The licensing agency shall also provide back-up assistance when requested by the investigating law enforcement agency by conducting interviews, developing evidence, and sharing all relevant information.
  - (c) On Site monitoring — When there are children remaining at the facility being investigated and staff and administrative personnel involvement in the alleged abuse is suspected, the licensing agency shall, conduct on-site monitoring of the licensed facility until the investigation is complete.
- (d) Take Appropriate Action — The licensing agency shall have the discretion to take any appropriate action, including, but not limited to, conducting an administrative investigation, or revoking or suspending a facility's license. The licensing agency's authority to take appropriate action is not diminished by the failure of law enforcement to take action. However, to the extent possible, the licensing agency shall consult with law enforcement prior to taking any action.

### **930.54. Conflict of Interests**

- (a) Law enforcement, county probation, county welfare, and licensing agencies shall ensure that the investigation of child abuse in an out-of-home care facility is carried out in an unbiased and impartial manner.
- (b) An individual child protective service worker or official who actually places the alleged child abuse victim, or has a direct personal relationship with the facility, the suspected abuser, or the alleged child abuse victim, which creates a conflict of interest, shall not be involved in or responsible for any part of the investigation or assessment of child abuse in that facility.
- (c) The child protective or licensing agency with primary jurisdiction over the case shall disqualify itself from conducting an investigation pursuant to these regulations whenever a conflict of interest exists between the agency and the suspected abuser, the facility, or the alleged victim.
- (d) A conflict of interest exists under subsections (b), (c), or (e) of this section when the circumstances evidence a reasonable possibility that the agency, or the individual worker or official, may not exercise its/his/her investigative functions in an even-handed manner. Factors to be considered in determining whether the entire agency should be disqualified from conducting the investigation as required by subsection (c),

are the size of the agency, the number of investigating officials within the agency, and the nature of the relationship between the official and the suspected abuser, facility, or victim with whom the conflict exists. This last factor alone, is to be considered in determining whether an individual child protective service worker or official should be disqualified from being involved in, or responsible for, the investigation as required by subsection (b).

- (e) Child protective and licensing agencies shall develop agreements with other child protective and licensing agencies to conduct child abuse investigations where the agency with primary jurisdiction over the case has been disqualified because of a conflict of interest between that agency and the suspected abuser, child abuse victim, or facility, when a conflict of interest does exist, the non-conflicted agency shall conduct the investigation.

### **930.60. Preliminary Investigation**

- (a) Receipt of Initial Report — It is the responsibility of the individual child protective official receiving the initial report to:
  - (1) gather the pertinent facts,
  - (2) conduct a preliminary assessment of the risk to the child(ren) involved and determine the priority and level of response;
  - (3) coordinate response with other appropriate agencies;
  - (4) make appropriate cross-reports as required in section 930.40 of this article.
- (b) Preliminary Assessment — the priority and level of response by investigative personnel to allegations of child abuse in out-of-home care facilities shall be determined by the:
  - (1) nature and seriousness of the allegation(s);
  - (2) present risk to the child(ren);

- (3) credibility of the allegation(s);
  - (4) potential for loss and/or contamination of evidence;
  - (5) number of victims involved;
  - (6) need to protect the child care provider's rights and reputation in the community.
- (c) Coordination — the first responding official shall, when possible, notify child abuse investigators of the alleged child abuse prior to responding to the facility in order to:
    - (1) consider the need for surveillance;
    - (2) consider the need for a search warrant;
    - (3) consider the need for a multi-disciplinary team approach.
  - (d) Initial Investigative Visit to the Facility.
    - (1) Procedure — the first investigator at the facility where the abuse was alleged to have occurred shall complete, but not be limited to, the following action:
      - (A) insure the safety of the children;
      - (B) determine the number of children placed in the facility and the number of children present in the facility;
      - (C) make an immediate visual inspection of the condition of the facility and personnel;
      - (D) identify licensee, all employees and persons residing in the facility;
      - (E) note the degree of cooperation by persons contacted;
      - (F) conduct initial interviews.
    - (2) Initial Interviews — The first investigator on the scene shall assess the risk to the child(ren) involved and determine whether a crime has been committed by observing and conducting initial interviews. The interviews shall be conducted using the tech-

niques set forth in these regulations, section 930.61(e). The initial interviews shall be conducted with the following persons when appropriate:

- (A) reporting party;
- (B) witnesses;
- (C) victims;
- (D) sibling(s);
- (E) parents/caretakers;
- (F) child care staff;
- (G) director or administrator of the facility.

(e) Evidence and Documentation — The investigator shall gather and preserve all evidence supporting and negating the allegation(s) of child abuse. The preliminary investigative report shall contain all documentation relevant to the truth or falsity of the allegations, and the credibility of the suspect and witnesses, including but not limited to:

- (1) statements of all parties and witnesses;
- (2) the investigator's own observations;
- (3) physical evidence noted and secured.

(f) Identification of Suspect/Custody Considerations — The law enforcement officer shall seek to identify the suspect and determine whether or not to interview the suspect at the facility, as provided in section 930.61(e)(2) of these regulations. The officer shall also determine whether or not to take the suspect into custody as provided in section 930.51(b)(4) of these regulations.

(g) Medical Examination — A medical examination shall be conducted on the child abuse victim(s) as follows:

- (1) Necessity — When serious abuse is suspected, or the child abuse victim is an infant, a medical examination shall be conducted as soon as possible after the initial report is made to a child protective agency by a physician licensed to practice medicine in

California. In determining the proper time of the examination, the investigator shall consider the need for prompt diagnosis and treatment of injuries, and the prompt collection and documentation of any physical evidence. The exam shall be conducted by a physician who has received training in conducting child abuse examinations, or has had experience conducting child abuse examinations, if such a physician is available.

(A) Multiple Victims — The investigator shall consider using more than one licensed physician when possible, if there appear to be multiple victims who are alleged to have suffered sexual or serious physical abuse.

(B) Sexual Abuse — Where the investigation involves allegations of sexual abuse, the investigator shall consider using, when possible, a physician who has also received training in child sexual abuse examinations.

(2) Evidence — All evidence relevant to the alleged abuse, discovered in the course of the medical examination, including but not limited to, skeletal and dental x-rays, specimens, and blood samples, shall be collected and properly preserved.

### **930.61. Follow-Up Investigation**

(a) Review — The investigator shall review the completeness of the preliminary investigation to determine the scope and direction of the follow-up investigation. This review shall include:

- (1) confirmation of the elements of the crime or violation;
- (2) determination of the need for further interviews;
- (3) evaluation of all evidence to ensure that all statements are complete and

- accurate, and all physical evidence has been identified and documented;
- (4) determination of the need for a search warrant where the investigation is being conducted by a law enforcement investigator;
  - (5) determination of the need for confidentiality;
  - (6) determination of the custody status of the victim(s), sibling(s) and alleged offender(s);
  - (7) coordination with the appropriate agencies; and
  - (8) determination of the necessity of a multi-disciplinary team, if it is warranted by the complexity of the investigation.
- (b) Records Check — An investigation by law enforcement upon allegations of serious abuse, shall include a thorough records check of the suspect, including:
- (1) local files;
  - (2) criminal history data;
  - (3) Department of Justice Child Abuse Central Index;
  - (4) Department of Justice Registrations and Compliance files (Penal Code section 290); and
  - (5) California Department of Motor Vehicles.
- (c) Background Check — A thorough background investigation shall be conducted on the prime suspect(s) including:
- (1) previous residences and employers to determine prior offenses in other jurisdictions;
  - (2) previous relationships — spouse, ex-spouse, live-in relations and roommates;
  - (3) contacts with other agencies and/or jurisdictions,
- (d) Corroboration — Corroborating information relevant to guilt or innocence of the accused suspect shall be developed and gathered to include, but not be limited to, the following:
- (1) medical examination and/or medical history of the victims;
  - (2) witness statements;
  - (3) physical evidence;
  - (4) incriminating statements made by suspect;
  - (5) whether access to the victim by the suspect was possible and if he/she had the opportunity to commit the offense;
  - (6) modus operandi (M.O.) factors where relevant to prove serious abuse in a criminal prosecution.
- (e) Interview and Interrogation Techniques
- (1) General Considerations — When conducting interviews and interrogations, the investigating official shall:
    - (A) determine the purpose of the interview/interrogation and the interviewee's role in the case (i.e., victim, eye witness, expert, accused);
    - (B) plan and prepare for the interview/interrogation carefully;
    - (C) determine the functional and developmental level of the person to be interviewed;
    - (D) determine the various relationships of all parties involved in the alleged offense;
    - (E) determine if there are additional victims; witnesses, or suspects;
    - (F) review the existing evidence;
    - (G) protect the confidentiality of all parties involved in the offense;
    - (H) conduct all witness interviews/interrogations separately;
    - (I) avoid disclosure of case information to all parties involved in the alleged offense to prevent contamination of evidence;

- (J) instruct all parties involved in the alleged offense to maintain confidentiality.
- (2) Interview Interrogation of Suspect(s) — When conducting an interview/interrogation with the alleged suspect, the investigating official shall:
  - (A) establish rapport with the suspect;
  - (B) carefully select the setting for the interview/interrogation to ensure that the interview is conducted in privacy and free from distraction;
  - (C) determine if and when the suspect had access to victim;
  - (D) note the demeanor of suspect at the time of the interview;
  - (E) encourage suspect to relate the incident in his/her own words, noting any consistencies or inconsistencies in his/her statement;
  - (F) advise the suspect(s) of his/her constitutional rights and the nature of the investigation, when constitutionally required;
  - (G) consider and evaluate all new information and alternative explanations provided by the suspect;
  - (H) corroborate information already obtained through the investigation;
  - (I) document incriminating statements made by the suspect.
- (3) Interview of Victim(s) — The child abuse victims shall be interviewed as follows:
  - (A) Minimize the number of interviews — Every effort shall be made to minimize the number of interviewers who interview a child victim and the number of interviews with the child victim. Prior to the interview, the interviewer shall consider contacting and consulting with other

agencies, including but not limited to:

1. a specialized law enforcement child abuse investigative unit, if available,
  2. child welfare services;
  3. the licensing agency;
  4. the prosecuting attorney;
- (B) Sensitivity — The investigating official shall take care to be sensitive to the needs of the child, and shall use the following techniques:
1. take adequate time to establish trust and rapport with the child victim;
  2. provide a comfortable non-threatening atmosphere for the child;
  3. provide the child with emotional support by helping the child understand that he/she is not alone, is not at fault, and is not in danger;
  4. help the child identify a support person he/she can talk with after the interview, if he/she wishes;
  5. carefully select the setting for the interview to ensure that it is conducted in privacy, free from distracting and intimidating influences;
  6. use appropriate interview aids such as dolls, drawings, diagrams or models of the facility, or other similar aids;
  7. establish the child's developmental level;
  8. interview in age appropriate language;
  9. identify and accommodate any special handicaps the child may have;

10. be aware that the child may be blaming himself/herself for the offense and address this problem when appropriate;
  11. consider when and to whom the victim disclosed the incident;
  12. be aware that the child may have been threatened and is fearful of disclosing information and address this fear when appropriate;
  13. recognize when to discontinue the interview;
  14. be aware of cultural differences;
  15. tell the child the purpose of the interview, what to expect during the investigation, and be prepared to respond to the child's questions;
  16. conclude the interview so that the victim feels free to re-contact the investigator.
- (C) Special Considerations — When conducting child victim interviews, the investigator shall:
1. allow the child to describe the incident in his/her own words;
  2. establish and use the child's terminology and language for body parts and acts;
  3. avoid using technical terminology;
  4. avoid influencing the child's account of the alleged offense, e.g. by tone of voice, mannerisms, or words and gestures of encouragement;
  5. remain unbiased and avoid being judgmental when discussing the alleged suspect;
  6. establish time frame(s) (i.e. dates, days, holidays; birthdays, seasons) and jurisdiction(s) for all alleged offenses;
  7. determine whether there are other possible victims;
  8. avoid making promises or false reassurances; ensure that the suspect is not present during the interview of the child.
- (D) Multiple Victims — To prevent contamination of evidence and to preserve witness credibility in cases involving multiple victims, the investigator shall use different interviewers, when possible, to interview the children.
- (4) Witness Interviews — When conducting interviews with witnesses to an alleged child abuse offense, the investigator shall:
- (A) determine the sequence for witness interviews, interviewing key witnesses first;
  - (B) consider the developmental level of the witness;
  - (C) determine the source of the witness's knowledge of the alleged offense;
  - (D) determine if the witness could also be a victim;
  - (E) determine the witness's relationship to the victim and the suspect and consider motivation of the witness;
  - (F) avoid influencing the witness's account of the alleged offense;
- (5) Parent Interviews shall be conducted as follows:
- (A) When notifying parents of an investigation involving an out-of-home facility attended by their child, the investigator shall inform the parents about the investigation in such a way that the notification will not unduly alarm them and will not compromise the investigation.

- (B) In child abuse investigations involving day-care facilities, investigators shall advise parents of the importance of:
  1. maintaining confidentiality;
  2. not questioning their child for details, but recording spontaneous statements made by their child;
  3. not sharing information from their child's disclosure with other parents.
- (C) Parents of a child who attended a suspect day-care facility shall be interviewed regarding:
  1. dates and times the child attended the facility;
  2. their observations of the facility's daily operational procedures;
  3. any symptoms displayed by their child that might indicate abuse;
  4. complaints the child made to them;
  5. unexplained injuries or symptoms they may have observed;
  6. names the child has been taught regarding body parts;
  7. other facilities or persons who cared for the child;
  8. any prior incidents of abuse the child may have experienced in another setting;
  9. what the parent has told the child, if anything, about the allegations of abuse or the pending interview.
- (6) Owner/director/administrator Interviews — The investigating official shall interview the owner/director/administrator in charge of the facility's operations. Where more than one person occupy these roles, all such persons shall be interviewed. The interviewer shall determine, assess, and obtain the following.
  - (A) owner/director/administrator's knowledge of the abuse and willingness to take protective action;
  - (B) owner/director/administrator's response to allegations of abuse and interview;
  - (C) appropriate records on the children and the suspect, i.e. enrollment, attendance, and employment records.
- (f) Liaison With the Media — Unless otherwise required by law, in order to avoid compromising the confidentiality and integrity of the criminal investigation, the primary agency in charge of the investigating shall be the agency responsible for issuing any information to the media. This shall be done through the agency's media spokesperson, not the involved investigators.
- (g) Referral to Therapist
  - (1) When to Refer — The investigator shall refer victims and their families to qualified therapists under the following circumstances:
    - (A) if a child has disclosed serious abuse in an out-of-home care facility;
    - (B) if a child was named by another victim as also having been victimized, but is not disclosing;
    - (C) if a child displays symptoms indicating possible abuse, but appears too timid or frightened to disclose abuse.
  - (2) Therapist Role — The role of the therapist shall be to evaluate, diagnose, and/or treat. A therapist shall not have any investigative responsibilities, and the therapeutic interview shall not replace an investigative interview

by law enforcement. However, if the therapist obtains information about a new incident or victim of abuse, a report shall be made.

### **930.62. Final Report.**

- (a) A final review and report shall be made by the agency with the primary responsibility for investigating the case as required by section 930.51 of these regulations and shall include:
  - (1) final disposition of the case including any action taken by that agency and the status of the victim(s) and suspect(s);
  - (2) all evidence identified and collected;
  - (3) completion of all mandated reporting requirement forms.
- (b) A copy of the final report shall be made available upon request to any person or agency authorized under subdivision (b) of Penal Code section 11167.5.
- (c) Interested parties shall be informed, upon written request, of the outcome of the investigation.

### **930.70. Enforcement of Guidelines.**

To ensure that every investigation of alleged child abuse in out-of-home care facilities is conducted in accordance with the Guidelines set forth in this article, the Department of Justice shall implement the following procedures:

- (a) The Department of Justice, Division of Law Enforcement, shall monitor investigations of incidents of suspected child abuse in out-of-home care facilities reported under section 11169 of the Penal Code to ensure that each incident is being investigated and that reasonable progress is made in the investigation. The Division shall maintain records which shall include the case file name or report number of each such

incident, the county and agency conducting the investigation, the date of the incident and the date it was reported to the investigative agency, information concerning any action taken upon completion of the investigation or final disposition of the matter, and the notification submitted under section 930.41.

- (1) The records required by this section shall be compiled from reports submitted pursuant to section 11169 of the Penal Code and sections 930.40 through 930.41 of this article, and may include information from records maintained by the Department of Justice on arrest and conviction.
- (2) Records maintained by the Department of Justice on arrests for child abuse related charges shall be used to verify whether or not reports required by this article or the Child Abuse Reporting Law have been submitted. If such reports have not been submitted, the Department shall request that the appropriate child protective agency in the county where the arrest occurred submit the required reports.
- (b) The Office of the Attorney General shall be notified by the Division of Law Enforcement of any incidents of suspected child abuse in out-of-home care facilities reported under section 11169 of the Penal Code:
  - (1) where it appears reasonable progress is not being made in the investigation,
  - (2) where reports required by section 11169 of the Penal Code or by this article have not been submitted, or
  - (3) where any of the information required for the Division of Law Enforcement to monitor the investigation is not made available by the appropriate agencies.