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4th.Dist. No. E054516

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

SUPREME COURT
FILED

**B.H., A MINOR, BY AND THROUGH
HIS GUARDIAN AD LITEM, L.H.,**
Plaintiff and Appellant,

DEC 13 2013

Frank A. McGuire Clerk

vs.

Deputy

**COUNTY OF SAN BERNARDINO, CITY OF YUCAIPA,
K. SWANSON, JEFF BOHNER, LOUIS KELLY SHARPLES II,**
Defendants and Respondents.

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY
HON. DONALD R. ALVAREZ, JUDGE
SUP. CT. No. CIVDS 913403

MOTION FOR JUDICIAL NOTICE

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ATTORNEYS FOR PLAINTIFF AND APPELLANT

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 459 and Rule 8.252, California Rules of Court, plaintiff and appellant hereby moves the Court to take judicial notice of a true and correct copy of portions of the legislative history of the enactment of the Child Abuse and Neglect Reporting Act (“CANRA”), Senate Bill 781, Chapter 1071, Statutes of 1980 (1977–1978 Reg. Sess.). These materials were obtained by counsel for plaintiff and appellant from Legislative Intent Service (“LIS”) of Woodland, California.¹ The documents are described and indicated under penalty of perjury to be true and correct copies of the originals in the declaration of Jenny S. Lillge, attorney for LIS. Plaintiff and Appellant hereby requests the Court to take judicial notice of these documents pursuant to Evidence Code section 459.

Plaintiff and appellant also requests that the Court take judicial notice of several regulations published by the California Attorney General entitled “Department of Justice Regulations for Child Abuse Reports Recordkeeping” and official administrative forms published by the California Department of Justice. These materials are referred to in the opening brief on the merits and are also attached to this motion.

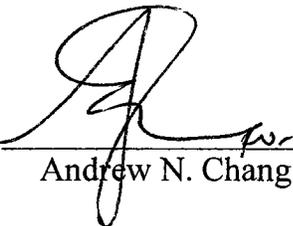
¹ Because of the volume of documents in the LIS collection authenticated by counsel for LIS (over 1000 pages) and the variety of subject matter and code sections discussed, at this time Plaintiff and Appellant has not asked the court to take judicial notice of the entire history and will make it available to the Court if requested.

This motion is based upon the declaration herein of Stuart B. Esner, the Declaration of Jenny S. Lillge, which is attached as Exhibit A and which authenticates the pertinent materials which are the subject of this motion, and upon the supporting memorandum of points and authorities.

Dated: December 12, 2013

THE KEANE LAW FIRM, P.C.
Christopher J. Keane

ESNER, CHANG & BOYER
Stuart B. Esner
Andrew N. Chang

By:  _____
Andrew N. Chang

Attorneys for Plaintiff and Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

In his opening brief on the merits, plaintiff and appellant has cited to the above-mentioned published material consisting of published portions of the legislative history related to the enactment of CANRA, supplied to counsel and authenticated by the Legislative Intent Service. This Court has deemed it appropriate to cite to published legislative material, without the necessity of a motion for judicial notice. (*Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 45 [“A request for judicial notice of published [legislative] material is unnecessary. Citation to the material is sufficient”]; *Stop Youth Addiction v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 571, fn. 9 [“Simple citations to such published materials would have sufficed”]; accord, *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 440 fn. 18.)

The attached documents are published legislative material. Nevertheless, out of an abundance of caution, plaintiff and appellant moves this Court to take judicial notice of the pertinent pages of the material, along with a brief authenticating declaration, pursuant to Evidence Code section 459 and Court Rules 8.520(g) and 8.252.

The portions of legislative history attached are part of the complete legislative history of Senate Bill 781, Chapter 1071, Statutes of 1980 (1977–1978 Reg. Sess.). These documents were obtained from the Legislative Intent Service in

Woodland California (“LIS”) and submitted under the declaration of Jenny S. Lillge, as true and correct copies of the originals.²

Under Evidence Code section 459 appellate courts have the same right and power to take judicial notice as do the trial courts. “In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.” (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927.)

Documents supplied by LIS have consistently been utilized by this Court, either when proffered by the litigants or on the Court’s own motion, and LIS has often been mentioned in appellate opinions as the source of the documents. (See, e.g., *People v. Sanchez* (2001) 24 Cal.4th 983, 992, fn.4; *People v. Brown* (1993) 6 Cal.4th 322, 334.)

The declaration of a Legislative Intent Service attorney to the effect that the copies provided are true and correct copies of the originals is sufficient to authenticate the materials. (*Whaley v. Sony Computer America, Inc.* (2004) 121 Cal.App.4th 479, 487.)

² The trial court was asked to take judicial notice of a portion of the legislative history that was authenticated by Ms. Lillge of the LIS. (See AA 676-679.) The trial court’s order granting summary judgment was silent concerning the request for judicial notice but did state it was granting summary judgment “after full consideration of the evidence.” (AA 789.) The Court of Appeal was also requested to take judicial notice of a portion of the legislative history, and the Court of Appeal’s opinion is also silent as to the request.

Courts have taken judicial notice of reports and transcripts of hearings of legislative committees which preceded the enactment of a statute. (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 376; *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519, fn. 5; *Maggio v. Agricultural Labor Relations Bd.* (1987) 194 Cal.App.3d 1329, 1333; accord, *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 32, 36 [providing comprehensive list of legislative history materials that are properly judicially noticed, including Assembly Committee reports and transcripts of committee hearings].)

Further, the documents are relevant. The type of published legislative document submitted herewith is routinely considered by the reviewing courts of this State when considering the background and purpose of specific bills and statutes:

Youngblood v. Gates (1988) 200 Cal.App.3d 1302, 1340 [transcript of a public hearing of the Assembly Interim Committee on Criminal Procedure “are the type of material this division has readily consulted in the past.”];

In re Joshua S (2008) 42 Cal.4th 945, 956 [testimony before the Senate Committee on the Judiciary];

Murphy v. Kenneth Cole Productions (2007) 40 Cal.4th 1094, 1109 [transcripts of Industrial Welfare Commission hearings];

Harris v. Pricewaterhousecoopers, LLP (2006) 39 Cal.4th 1220, 1230-1 [testimony before the Assembly Judiciary Committee];

Microsoft Corporation v. Franchise Tax Board (2006) 39 Cal.4th 750, 760 [drafting history includes testimony before subcommittee];

Grafton Partners v. Superior Court (2005) 36 Cal.4th 944, 955 [testimony before the California Constitution Revision Commission];

People v. Jeffers (1987) 43 Cal.3d 984, 997 [law's provisions "should be construed in light of the major areas of concern expressed at the legislative hearings"];

Similarly here, the attached legislative materials shed considerable light on the circumstances leading to the passage of CANRA (Stats 1980 ch 1071) and its purposes.

As for the regulations and official administrative forms which are referred to and discussed in the merits brief, and attached hereto, judicial notice is also proper. (Evid.Code, § 451, subd. (b); *Sheyko v. Saenz* (2003) 112 Cal.App.4th 675, 693 [regulations and administrative forms which are published by a state agency].)

CONCLUSION

For the foregoing reasons, in the event the Court deems judicial notice is necessary in order to allow the parties to cite to published material such as that attached hereto, plaintiff and appellant respectfully requests the Court grant his motion for judicial notice.

Dated: December 12, 2013

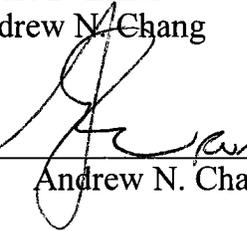
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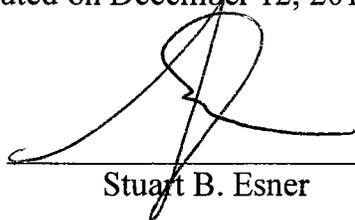
Attorneys for Plaintiff and Appellant

DECLARATION OF STUART B. ESNER

I, Stuart B. Esner, declare as follows:

1. I am an attorney licensed to practice law in the State of California and a partner with Esner, Chang & Boyer, which is co-counsel on appeal for Plaintiff and Appellant B. H. in this action.
2. I have personal knowledge of the facts set forth in this declaration and if called upon to do so I could and would competently testify thereto.
3. The attached Declaration of Jenny S. Lillge, counsel for the Legislative Intent Service, is a true and correct copy of the original Declaration submitted to the trial court and a copy of which was also submitted to the Court of Appeal below.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on December 12, 2013, at Pasadena, California.



Stuart B. Esner

**LEGISLATIVE HISTORY
MATERIALS**



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service undertook to locate and obtain all documents relevant to the enactment of Senate Bill 781 of 1980. Senate Bill 781 was approved by the Legislature and was enacted as Chapter 1071 of the Statutes of 1980.

The following list identifies all documents obtained by the staff of Legislative Intent Service on Senate Bill 781 of 1980. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service. In compiling this collection, the staff of Legislative Intent Service operated under directions to locate and obtain all available material on the bill.

EXHIBIT A - SENATE BILL 781 OF 1980:

1. All versions of Senate Bill 781 (Rains-1980);
2. Procedural history of Senate Bill 781 from the 1979-80 Senate Final History;
3. Analysis of Senate Bill 781 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 781;
5. Third Reading analysis of Senate Bill 781 prepared by the Senate Republican Caucus;
6. Third Reading analysis of Senate Bill 781 prepared by the Senate Democratic Caucus;
7. Three analyses of Senate Bill 781 prepared for the Assembly Committee on Criminal Justice;

8. Analysis of Senate Bill 781 prepared for the Assembly Committee on Ways and Means;
9. Legislative Counsel's Rule 26.5 analysis of Senate Bill 781;
10. Conference Committee Report No. 015310 analysis of Senate Bill 781 prepared by the Assembly Office of Research;
11. Post-enrollment documents regarding Senate Bill 781;
12. Material from the file of the Legislative Representative of the State Bar of California on Senate Bill 781;
13. Material from the file of the Department of Finance on Senate Bill 781;
14. Excerpt regarding Senate Bill 781 from the 1980 Summary Digest of Statutes Enacted and Resolutions Adopted prepared by Legislative Counsel;
15. Child Abuse Reporting, a hearing held by the Assembly Committee on Criminal Justice, November 21, 1978;
16. Opinions of the Attorney General, as follows:
 - a. Volume 57, 1974;
 - b. Volume 58, 1975.

EXHIBIT B - ASSEMBLY BILL 3431 OF 1978 (PREDECESSOR BILL):

1. All versions of Assembly Bill 3431 (Ellis-1978);
2. Procedural history of Assembly Bill 3431 from the 1977-78 Assembly Final History;
3. Two analyses of Assembly Bill 3431 prepared for the Assembly Committee on Criminal Justice;
4. Third Reading analysis of Assembly Bill 3431 prepared by the Assembly Office of Research;
5. Two analyses of Assembly Bill 3431 prepared for the Senate Committee on Judiciary;
6. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 3431;
7. Material from the legislative bill file of Assembly Member Ellis on Senate Bill 3431.
8. Material from the legislative bill file of the Assembly Committee on Criminal Justice on Assembly Bill 3431.

EXHIBIT C - SENATE BILL 1614 OF 1978 (PREDECESSOR BILL):

1. All versions of Senate Bill 1614 (Rains-1978);
2. Procedural history of Senate Bill 1614 from the 1977-78 Senate Final History;
3. Analysis of Senate Bill 1614 prepared for the Senate Committee on Judiciary;

4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1614;
5. Analysis of Senate Bill 1614 prepared by the Legislative Analyst;
6. Material from the legislative bill file of the Senate Committee on Finance on Senate Bill 1614;
7. Third Reading analysis of Senate Bill 1614 prepared by the Senate Democratic Caucus;
8. Third Reading analysis of Senate Bill 1614 prepared by the Senate Republican Caucus;
9. Two analyses of Senate Bill 1614 prepared for the Assembly Committee on Criminal Justice;
10. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 1614;

EXHIBIT D - COMPETITOR BILLS:

1. All versions of Assembly Bill 176 (Ellis-1979);
2. Procedural history of Assembly Bill 176 from the 1979-80 Assembly Final History;
3. All versions of Assembly Bill 781 (Egeland-1979);
4. Procedural history of Assembly Bill 781 from the 1979-80 Assembly Final History;
5. All versions of Assembly Bill 1773 (Hart-1980);
6. Procedural history of Assembly Bill 1773 from the 1979-80 Assembly Final History.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23rd day of December, 2010 at Woodland, California.



JENNY S. LILLGE

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no. 2
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CHILD ABUSE REPORTING

HEARING
ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE

Los Angeles
November 21, 1978

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HEARING

CHILD ABUSE REPORTING

Los Angeles, California
 November 21, 1978

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Assemblyman Kenneth L. Maddy, Chairman Assembly Committee on Criminal Justice	1
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ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE

Interim Hearing

CHILD ABUSE REPORTING

November 21, 1978
Los Angeles, California

CHAIRMAN KENNETH MADDY: The Assembly Committee on Criminal Justice will begin. Other Members of the Committee will join us as the hearing progresses.

We are here today on the subject of Child Abuse Reporting which was Senate Bill 1614 by Senator Rains. We had other measures that were before us last year on the same subject. Senate Bill 1614 was a measure that reformed California's child abuse reporting laws and codified a Supreme Court decision which held a physician may be held civilly liable for foreseeable damage to a child as a result of his negligent failure to report a suspected case of child abuse. This bill did go through the Senate and came to our Committee. There were several issues raised at the time of our hearing, and the result was the determination that we should have an interim study, and Senator Rains, of course, has intentions of introducing his bill again.

Some of the issues that we will be concerned with today are what types of conduct should be reported? Who should be responsible for such reporting? What agency, law enforcement versus social welfare, should maintain such reports? What kind of access should a person have to reports on their own conduct? And, what provision should be made for purging stale and inaccurate reports?

where a child may be locked in a closet for a month, and that child comes to a psychiatrist a year later and says, "I've been locked in a closet and that is why I lose control over my bladder." Or whatever. It's an injury that can be observed by a doctor and is also an injury that can be communicated by the patient. And so, when you have this type of suffering and not just an ego type of suffering, but actual suffering from physical abuse that may not result in a physical injury, but would result in what we would term to be a mental injury, and if this occurred over a prolonged period, then you would have some serious psychiatric problems. And right now, I suspect there are few if any of those types of problems being reported at all.

So, in terms of getting away from allowing people, who are designated to report, to decide subjectively, in being the judge and the jury, the police, and everybody wrapped into one, we drafted this bill to foster cooperation between all agencies that are interested in child abuse that have a part in it by statute.

To give you an example of this philosophical split in the Federal Model Child Abuse Act, and I quote from a note to the _____ Citizen: "The designation of the police or law enforcement agencies is discouraged by the Model Act because criminal intent is largely absent in abuse and neglect cases." That's an actual quote from the comments to that act.

Well, I think it is readily apparent that to any first year law student or for that matter any lay person, that when you decide whether there is going to be criminal intent when an

injury has been inflicted, that's for the jury or the trial judge to determine, not for a social worker, or not for a policeman to say, "Gee, he didn't have the intent here." If you've got an injury that looks like it is intentionally inflicted, there has to be an investigation, and it has to proceed where all of those people that are involved in the process have a chance to participate in it. Because if a policeman or a social worker makes that decision by themselves, they do not have the expertise that is required by all of these agencies collectively to make that decision.

In effect, what we have had here in California because of the vast under-reporting, the Model Child Abuse Prevention Act is designed to de-criminalize child abuse. If it is a crime, and so defined, injuries intentionally inflicted, then they should be investigated and it should go either to a criminal proceeding, or a civil proceeding, or have a disposition after other people have looked at it, and not just one person.

And because of the under-reporting, what we've had in the last ten years, and previous to that without any reporting, we've almost had de-facto decriminalization in child abuse, because you will see later in some of the statistics that we'll put before you, that we have been getting 10 percent, maybe, of the reported cases. And I think that a statement like that

CHAIRMAN MADDY: Are you saying that only 10 percent of the cases of child abuse are being reported? How many of those cases come into contact with individuals who would be required to report it under statute?

it out of our regular criminal history identification records where you pull out 288s and 286s.

CHAIRMAN MADDY: All right, so out of the 70,000, 800 were sent to police, and 7,500 were sent to your office. Is that correct? Is that what you are saying?

MR. GATES: Right.

CHAIRMAN MADDY: All right. And what you want to see happen is that all 70,000 are sent to police, and all 70,000 are reported to you?

MR. GATES: Right. In other words, there may be even more than that.

CHAIRMAN MADDY: Does this bill require that the police investigate all 70,000?

MR. GATES: Well, it doesn't even require that now. It provides, however.....

CHAIRMAN MADDY: Tell me what you want.

MR. GATES: I want alternative reporting in the sense that either agency, if the police gets the report first, we provide that they immediately advise D.P.S.S., and vice versa. If D.P.S.S. gets it, they immediately advise the police.

CHAIRMAN MADDY: What do you want them to do once they are advised? Do you want someone to report or someone to investigate it?

MR. GATES: Someone to investigate it.

CHAIRMAN MADDY: And then after those individuals investigate, you want a follow-up report sent to the Department of Justice to let you know about it, is that correct?

that isn't the case. They are not doing that and we will show you some statistics. Alarming statistics that show that their statutory duty isn't being performed and in fact they're violating the law. The problem comes with Welfare and Institutions Code Section 16500 that gives the social worker four or five alternatives. One of them says report to the police. They think that is an alternative. It is not an alternative because in Section 16506 it says you are not relieved of reporting responsibilities. The reporting section itself says, police, sheriffs, or county health or county welfare. But in the same section, after you receive that report you are required to send it to the police. It is not being done. By the county welfare or probation. It just isn't being done. I don't believe it's being done maliciously. It is being done in the sense that they're interpreting the law wrong. Whether they have investigated before, after, or during. They are not being reported to the police. And it is not because the police should be running out every time because in terms of manpower and resources they are not going to be able to investigate every case. It is just the idea of being apprised and getting a followup, because the next time it may be the police that respond, and if they know that the welfare worker responded last week that is going to be significant to them and vice versa. And that is why we have provided that in both cases each agency reports to the other. In terms of what is reported and on what the information should be placed we provided that forms be provided by the Department of Justice tailored specifically to the individual reporters. We have already adopted one for medical personnel which is in a

ENROLLED BILL REPORT

AGENCY	HEALTH AND WELFARE	BILL NUMBER	SB 781
DEPARTMENT, BOARD OR COMMISSION	SOCIAL SERVICES	AUTHOR	RAINS

BILL SUMMARY

SB 781 is designed to modify California's child abuse reporting laws.

LEGISLATIVE HISTORY, SPONSORSHIP AND RELATED BILLS

SB 781 was introduced on March 23, 1979 by Senator Rains and is sponsored by the Attorney General's Office. This bill was designed to provide an alternative to a more controversial bill, AB 1773, by Assemblyman Hart. AB 1773 failed passage in the Assembly.

SPECIFIC FINDINGS

Current Law

Current law requires named classes of persons to report suspected cases of child abuse to one of four local agencies: local law enforcement, the county probation department, the county welfare department or the county health department. If the report is made to the welfare or health department, that agency must immediately report to local law enforcement agency and to the county probation department, unless the county board of supervisors has delegated responsibility for dependents of the court to the welfare department.

Effect of the Bill

1. SB 781, in its enrolled form, provides a specific definition for serious mental suffering. Currently, California law requires reporting of this type of abuse but does not provide a clear definition of what is meant by serious mental suffering. The definition contained in 781 will better instruct mental health professionals, physicians and others in sorting which cases need to be reported.
2. Community care facility operators who are licensed to care for children are added to the list of required child abuse reporters.
3. SB 781 provides clear definitions of the kind of treatment of children which constitutes abuse or neglect and which must be reported. Section C of the bill defines neglect as the neglectful failure of a person responsible for a child to protect him or her from severe malnutrition or medically diagnosed failure to thrive.

LEGISLATIVE INTENT SERVICE (800) 666-1917



RECOMMENDATION

SIGN

DEPARTMENT HEAD <i>Marie J. Wank</i>	DATE <i>Apr 5 1980</i>	AGENCY HEAD <i>Carol Shelley</i>	DATE PE - 19
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4. Section 11166(f) requires the law enforcement agency which receives a report of child abuse shall immediately report this to the county social services department. This is not currently not mandated. It will provide for more rapid response capabilities by the designated county social service agency.
5. Section 11167(c) provides for the identity of all persons who report child abuse shall be confidential and disclosed only by court order.
6. Section 11168 requires that written reports be submitted on forms adopted by the Department of Justice and gives the Department of Justice lead responsibility for prescribing regulations on how investigations of child abuse in group homes or institutions shall be made.
7. A statement of legislative intent is made in Section 5 of the bill. This intent encourages each county welfare department to establish within the department a toll-free number for receiving reports of child abuse 24 hours a day, seven days a week. This mandate is consistent with existing Department of Social Services regulations on county welfare departments for emergency response to child abuse matters.

FISCAL IMPACT

The Department of Social Services does not see a direct fiscal impact by the chaptering of SB 781, however, these ramifications to the child abuse law should lead to greater instances of child abuse reporting thus to a greater caseload but this cannot be estimated at this time.

RECOMMENDATION SIGN

The Department of Social Services believes that the modifications to the state's child abuse laws that are represented by SB 781 are long overdue and will provide better child protective services for children in abuse or neglect situations. The clear definition of abuse and neglect, particularly the definition of serious mental suffering will allow professionals to delineate that which is reportable against that which need not be reported. The bill also clarifies the role of the various county departments required to respond in child abuse situations thus providing more rapid and better service to the victim of child abuse.

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LEGISLATIVE INTENT SERVICE



Child Abuse Reporting

Section Affected

Amends Section 11161.5 of the Penal Code.

Purpose

Revise the standard for child abuse reporting and extend the immunity from civil and criminal sanctions on persons statutorily required to report incidents of child abuse.

Discussion

Present law statutorily mandates enumerated professions who commonly come into contact with minors to report incidents of child abuse. The professions are required to make reports when "From observation" it "appears" that a "minor has physical injury or injuries ... inflicted upon him by other than accidental means" (emphasis added). Immunity from civil and criminal liability is conferred on the maker of the report "unless it can be proven that a false report was made and the person knew or should have known that the report was false."

Assembly Bill 2497 revises the reporting standard for the enumerated professionals to require a report when such person "has reasonable cause to believe that a minor has physical injury or injuries inflicted upon him or her by other than accidental means."

The child abuse reporting system is the single most important point of access to the justice system for children under the age of five in California. Mandatory health screening begins to bring maltreated children to public attention at school age, but more life-threatening and brain-damaging abuse affects infants and toddlers, who may survive only if the reporting statute is responsive to their needs.

Unfortunately the present reporting statute contains an enormous loophole which jeopardizes the well being of helpless children. Specifically, the California Supreme Court held in Landeros v. Flood (1976) 17 C 3d. 399 that "the provision of Section 11161.5 is ambiguous with respect to the required state of mind of the physician" (emphasis added). The court opined that to prove an actionable failure to report, the plaintiff must show that the professional actually "observed... (the) injuries and formed the opinion that they were intentionally inflicted" upon the child (page 415).

Assembly Bill 2497 revises the reporting standard to overcome the Landeros ruling to require reporting by professionals when there exists "reasonable cause to believe that a minor has physical injury or injuries inflicted upon him or her by other than accidental means..." (emphasis added). This language will obviate the "state of mind" requirement of Landeros and thereby promote increased child



abuse reporting upon reliable information to the professional. Further, as of 1973, only six states did not impose the "cause to believe", "reason to believe", "reasonable cause to believe", or "probable cause to suspect" language as the trigger for child abuse reporting. (Appendix A)

Concurrent with revising the reporting standard, Assembly Bill 2497 revises the immunity provision to eliminate the chilling effect of the exception for false or negligent reports and extend limited immunity to persons other than the statutorily enumerated professionals. It must be emphasized that the reinstatement of total civil and criminal immunity is integrally related to the imposition of the "reasonable cause to believe" reporting standard.

In 1975 and 1976, the Legislature amended Section 11161.5 of the Penal Code to add an exception to the civil and criminal immunity which provided that "unless it can be proven that a false report was made and the person knew or should have known that the report was false." Although the chilling effect of the amendment is difficult to measure, the limitation on immunity is certainly sufficient cause for enumerated professionals to hesitate when they are aware that an angry parent may initiate litigation for damages for a report which is subsequently proven to be false. The cost of legal representation to defend, and the human toll in time wasted and anxiety suffered, are sufficient to deter many potential reporters. Since there exist numerous legal and personal impediments to reporting to the detriment of an abused child, it is reasonable to eliminate the limitation on civil and criminal immunity for objective non-biased professionals.

Further, extending limited civil and criminal immunity to "any other person making a report of child abuse or molestation" (emphasis added) will encourage members of the general public to report known cases of child abuse. The limitation on total immunity for false or negligent reports is necessary to prevent a vindictive former spouse or neighbor from making a knowingly false report.

The seriousness of the problem of child abuse cannot be over estimated. Repeated instances of abuse of the same child tend to lead to progressively more severe results, including death, brain damage, and disabling emotional handicaps. It's not a tiny fraction of the child population we're talking about, either. Approximately 10% of all trauma seen in emergency rooms affecting children under three years of age is inflicted.¹ Of all fractures in children under two years of age, 25% are inflicted.² Studies show reinjury rates after initial abuse run as high as 50% to 60%.³

¹Holter and Friedman, Pediatrics, Vol. 42 (March 1976) p. 128.

²Kempe, Disease in Childhood, Vol. 46 (1971) pp. 28-37.

³J. Ebbin, "Battered Child Syndrome at the L.A. County Hospital," Am. Journal of Disease in Children, Vol. 118 (1969) pp. 660-7. Skinner and Castle, Seventy-Eight Battered Children: A Retrospective Study, London Natl. Society for the Prevention of Cruelty to Children. (1969)

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1 subdivisions (c), (d), (e), and (f) of, Section 288a (oral
2 copulation); and Section 285 (incest).

3 (c) "Child abuse" means the intentional infliction of
4 serious mental suffering; or a physical injury which is
5 inflicted by other than accidental means on a child by
6 another person. "Child abuse" also means the sexual
7 assault of a child or any act or omission proscribed by
8 Section 273a or 273d.

9 (d) "Child care custodian" means a teacher,
10 administrative officer, supervisor of child welfare and
11 attendance, or certificated pupil personnel employee of
12 any public or private school; an administrator of a public
13 or private day camp; a licensed day care worker; an
14 administrator of a child care center; or a social worker or
15 a probation officer.

16 (e) "Medical practitioner" means a physician and
17 surgeon, osteopath, psychiatrist, dentist, resident, intern,
18 podiatrist, chiropractor, licensed nurse, dental hygienist,
19 or any other person who is currently licensed under
20 Division 2 (commencing with Section 500) of the
21 Business and Professions Code.

22 (f) "Nonmedical practitioner" means a state or county
23 public health employee who treats children for venereal
24 disease or any other condition; a psychologist, a coroner,
25 a paramedic; a marriage, family, or child counselor; or a
26 religious practitioner who diagnoses, examines, or treats
27 children.

28 (g) "Child protective agency" means a police or
29 sheriff's department, or a county welfare department.

30 11166. (a) Any child care custodian, medical
31 practitioner, nonmedical practitioner, or employee of a
32 child protective agency who has knowledge of, or
33 observes a child in his or her professional capacity or
34 within the scope of his or her employment, whom he or
35 she reasonably suspects has been the victim of child abuse
36 shall report such suspected instance of child abuse to a
37 child protective agency immediately by telephone and
38 shall prepare and send a written report thereof within 36
39 hours. For the purposes of this article a report by a
40 medical or nonmedical practitioner shall not be required

1 for unlawful sexual intercourse where consent to
2 treatment related to pregnancy has been made under
3 Section 34.5 of the Civil Code and the treating physician
4 has no reason to believe that the minor is not a victim of
5 incest or rape.

6 (b) Any other person who had knowledge of or
7 observes a child whom he or she reasonably suspects has
8 been a victim of child abuse may report such suspected
9 instance of child abuse to a child protective agency.

10 (c) The physician and surgeon or dentist has the
11 primary duty to report under this section. Nurses and
12 dental hygienists assisting physicians and surgeons and
13 dentists are not required to, but may, make such reports
14 independently. When two or more persons, with
15 identical licensure, who are required to report are
16 present and jointly involved and have knowledge of or
17 are jointly treating a child and there is cause to suspect
18 child abuse, and when there is mutual agreement among
19 them as to which member of the team will make the
20 report, then only one report is required and shall be
21 made by the team member selected by mutual
22 agreement.

23 (d) The reporting duties under this section are
24 individual, and no supervisor or administrator may
25 impede or inhibit such reporting duties. However,
26 internal procedures to facilitate reporting and appraise
27 supervisors and administrators of reports may be
28 established provided that they are not inconsistent with
29 the provisions of this article.

30 (e) A county welfare department shall immediately
31 report by telephone every instance of suspected child
32 abuse reported to it to the law enforcement agency
33 having jurisdiction over the case, and to the agency given
34 responsibility for investigation of cases under Section 300
35 of the Welfare and Institutions Code, and shall send a
36 written report thereof within 36 hours to that agency.

37 (f) A law enforcement agency shall immediately
38 report by telephone every instance of suspected child
39 abuse reported to it to the agency given responsibility for
40 investigation of cases under Section 300 of the Welfare

1 and Institutions Code and shall send a written report
2 thereof within 36 hours to such agency.

3 11167. (a) A telephone report of suspected child
4 abuse shall include the name of the person making the
5 report, the name of the child, the present location of the
6 child, the nature and extent of the injury, and any other
7 information, including information that led such person
8 to suspect child abuse, requested by the child protective
9 agency.

10 (b) Information relevant to the incident of child abuse
11 may also be given to an investigator from a child
12 protective agency who is investigating the suspected case
13 of child abuse.

14 (c) Persons who may report under subdivision (b) of
15 Section 11166 are not required to include their names
16 under this section. The identity of all persons who report
17 under this article shall be confidential and disclosed only
18 by court order or between child protective agencies or
19 the probation department.

20 11168. The written reports required by Section 11166
21 shall be submitted on forms adopted by the Department
22 of Justice after consultation with representatives of the
23 various professional medical associations and hospital
24 associations and county welfare departments. Such forms
25 shall be distributed by the child protective agencies.

26 11169. A child protective agency shall forward to the
27 Department of Justice a report in writing of every case of
28 suspected child abuse which it investigates, whether or
29 not any formal action is taken in the case. However, if
30 after investigation the case proves to be unfounded no
31 report shall be filed with the Department of Justice. If a
32 report has previously been filed which has proved
33 unfounded the Department of Justice shall be notified of
34 that fact. The report shall be in a form approved by the
35 Department of Justice.

36 11170. The Department of Justice shall immediately
37 notify a child protective agency which submits a report
38 pursuant to Section 11169 of any information maintained
39 pursuant to Section 11110 which is relevant to the
40 suspected instance of child abuse reported by the agency.

1 The indexed reports retained by the Department of
2 Justice shall be continually updated and shall not contain
3 any unfounded reports. Such agency shall make such
4 information available to the reporting medical
5 practitioner, child custodian, or guardian ad litem
6 appointed under Section 318 of the Welfare and
7 Institutions Code, if he or she is treating or investigating
8 a case of suspected child abuse.

9 11171. (a) A physician and surgeon or dentist may
10 take skeletal X-rays of the child without the consent of
11 the child's parent or guardian, but only for purposes of
12 diagnosing the case as one of possible child abuse and
13 determining the extent of such child abuse.

14 (b) Neither the physician-patient privilege nor the
15 psychotherapist-patient privilege applies to information
16 reported pursuant to this article in any court proceeding
17 or administrative hearing.

18 11172. (a) No person reporting a suspected instance
19 of child abuse shall be civilly or criminally liable for any
20 report required or authorized by this article.

21 (b) Any person who willfully or with gross negligence
22 fails to report as required by this article an instance of
23 child abuse which he or she knows to exist or reasonably
24 should know to exist shall be civilly liable for all damages
25 reasonably foreseeable as the result of such failure to
26 report. The civil remedy provided by this section is in
27 addition to any other civil remedy or cause of action
28 provided by law, including judicial decisions. Nothing in
29 this section shall affect any cause of action that a person
30 may otherwise have by law, including judicial decisions,
31 under this article. The remedy provided by this section
32 shall be applicable to damages suffered on or after the
33 effective date of this act.

34 11173. Any person, firm, or corporation which
35 willfully fails to make a report required by this article is
36 guilty of a misdemeanor and is punishable by
37 confinement in the county jail for a term not to exceed
38 six months or by a fine of not more than one thousand
39 dollars (\$1,000) or by both.

40 SEC. 4. No appropriation is made by this act, nor is

1 administering the treatment to reasonably ensure that
 2 sexual molestation other than conduct violating only
 3 Section 261.5 or 647a is not involved.

4 (e) "Medical practitioner" means a physician and
 5 surgeon, osteopath, psychologist, dentist, resident, intern,
 6 podiatrist, chiropractor, licensed nurse, dental hygienist,
 7 or any other person who is currently licensed under
 8 Division 2 (commencing with Section 500) of the
 9 Business and Professions Code.

10 (f) "Nonmedical practitioner" means a state or county
 11 public health employee who treats children for venereal
 12 disease or any other condition; a psychologist, a coroner,
 13 a paramedic; a marriage, family, or child counselor; or a
 14 religious practitioner who diagnoses, examines, or treats
 15 children.

16 (g) "Child protective agency" means a police or
 17 sheriff's department, a county probation department, or
 18 a county welfare department.

19 11166. (a) Any child care custodian, medical
 20 practitioner, nonmedical practitioner, or employee of a
 21 child protective agency who has knowledge of or
 22 observes a child in his or her professional capacity or
 23 within the scope of his or her employment whom he or
 24 she reasonably suspects has been the victim of child abuse
 25 shall report such suspected instance of child abuse to a
 26 child protective agency immediately or as soon as
 27 practically possible by telephone and shall prepare and
 28 send a written report thereof within 36 hours of receiving
 29 the information concerning the incident. For the
 30 purposes of this article a report by a medical or
 31 nonmedical practitioner shall not be required for
 32 unlawful sexual intercourse where consent to treatment
 33 related to pregnancy has been made under Section 34.5
 34 of the Civil Code and the treating physician has no reason
 35 to believe that the minor is a victim of sexual assault.

36 (b) Any other person who had knowledge of or
 37 observes a child whom he or she reasonably suspects has
 38 been a victim of child abuse may report such suspected
 39 instance of child abuse to a child protective agency.

40 (c) When two or more persons who are required to

1 report are present and jointly have knowledge of a
 2 suspected instance of child abuse, and when there is
 3 agreement among them, the telephone report may be
 4 made by a member of the team selected by mutual
 5 agreement and a single report may be made and signed
 6 by such selected member of the reporting team. Any
 7 member who has knowledge that the member
 8 designated to report has failed to do so, shall thereafter
 9 make such report.

10 (d) The reporting duties under this section are
 11 individual, and no supervisor or administrator may
 12 impede or inhibit such reporting ~~duties~~ duties and no
 13 person making such report shall be subject to any
 14 sanction for making such report. However, internal
 15 procedures to facilitate reporting and apprise supervisors
 16 and administrators of reports may be established
 17 provided that they are not inconsistent with the
 18 provisions of this article.

19 (e) A county probation or welfare department shall
 20 immediately or as soon as practically possible report by
 21 telephone every instance of suspected child abuse
 22 reported to it to the law enforcement agency having
 23 jurisdiction over the case, and to the agency given
 24 responsibility for investigation of cases under Section 300
 25 of the Welfare and Institutions Code, and shall send a
 26 written report thereof within 36 hours of receiving the
 27 information concerning the incident to that agency.

28 (f) A law enforcement agency shall immediately or as
 29 soon as practically possible report by telephone every
 30 instance of suspected child abuse reported to it to the
 31 agency given responsibility for investigation of cases
 32 under Section 300 of the Welfare and Institutions Code
 33 and shall send a written report thereof within 36 hours of
 34 receiving the information concerning the incident to
 35 such agency.

36 11167. (a) A telephone report of suspected child
 37 abuse shall include the name of the person making the
 38 report, the name of the child, the present location of the
 39 child, the nature and extent of the injury, and any other
 40 information, including information that led such person



1 appropriate on his or her training and experience, to
2 suspect child abuse.

3 For the purposes of this article a report by a medical or
4 nonmedical practitioner shall not be required for
5 unlawful sexual intercourse where consent to treatment
6 related to pregnancy or venereal disease has been made
7 under Section 34.5 or 34.7 of the Civil Code and the
8 treating physician has no reason to believe that the minor
9 is a victim of sexual assault.

10 In those instances in which a minor 14 years of age or
11 older seeks or consents to hospital, medical, or surgical
12 care for the prevention or treatment of pregnancy or
13 venereal disease and only a violation of Section 261.5
14 (unlawful sexual intercourse) or Section 647a (child
15 molestation) is involved, a report is authorized but not
16 required. This exception is contingent upon sufficient
17 inquiry being made by the person administering the
18 treatment to reasonably ensure that sexual molestation
19 other than conduct violating Section 261.5 or 647a is not
20 involved.

21 (b) Any child care custodian, medical practitioner,
22 nonmedical practitioner, or employee of a child
23 protective agency who has knowledge of or who
24 reasonably suspects that mental suffering has been
25 inflicted on a child or its emotional well-being is
26 endangered in any other way, may report such suspected
27 instance of child abuse to a child protective agency.

28 (c) Any other person who had knowledge of or
29 observes a child whom he or she reasonably suspects has
30 been a victim of child abuse may report such suspected
31 instance of child abuse to a child protective agency.

32 (d) When two or more persons who are required to
33 report are present and jointly have knowledge of a
34 suspected instance of child abuse, and when there is
35 agreement among them, the telephone report may be
36 made by a member of the team selected by mutual
37 agreement and a single report may be made and signed
38 by such selected member of the reporting team. Any

1 member who has knowledge that the member
2 designated to report has failed to do so, shall thereafter
3 make such report.

4 (e) The reporting duties under this section are
5 individual, and no supervisor or administrator may
6 impede or inhibit such reporting duties and no person
7 making such report shall be subject to any sanction for
8 making such report. However, internal procedures to
9 facilitate reporting and apprise supervisors and
10 administrators of reports may be established provided
11 that they are not inconsistent with the provisions of this
12 article.

13 (f) A county probation or welfare department shall
14 immediately or as soon as practically possible report by
15 telephone every instance of suspected child abuse as
16 defined in Section 11165 reported to it to the law
17 enforcement agency having jurisdiction over the case,
18 and to the agency given responsibility for investigation of
19 cases under Section 300 of the Welfare and Institutions
20 Code, and shall send a written report thereof within 36
21 hours of receiving the information concerning the
22 incident to that agency.

23 (g) A law enforcement agency shall immediately or as
24 soon as practically possible report by telephone every instance
25 of suspected child abuse reported to it to county social
26 services and the agency given responsibility for
27 investigation of cases under Section 300 of the Welfare
28 and Institutions Code and shall send a written report
29 thereof within 36 hours of receiving the information
30 concerning the incident to such agency.

31 (a) A telephone report of suspected child
32 abuse shall include the name of the person making the
33 report, the name of the child, the present location of the
34 child, the nature and extent of the injury, and any other
35 information, including information that led such person
36 to suspect child abuse, requested by the child protective
37 agency.



moved or operated upon a highway after January 1, 1982, unless the owner makes application for a license plate and, when received, attaches it to the motorized bicycle as provided in this article.

(c) Any motorized bicycle currently licensed pursuant to Division 16.7 (commencing with Section 39000) on July 1, 1981, may be operated upon a highway until July 1, 1982.

5038. The department shall establish a record system that provides for identification of stolen motorized bicycles.

5039. Notwithstanding any other provision of law, no dealer, manufacturer, salesman, or representative of motorized bicycles exclusively is required to be licensed or permitted pursuant to Chapter 4 (commencing with Section 11700) of Division 5.

SEC. 2. Section 39013 of the Vehicle Code is repealed.

SEC. 3. The sum of twenty-nine thousand five hundred sixty dollars (\$29,560) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles to implement Article 8.1 (commencing with Section 5030) of Chapter 1 of Division 3 of the Vehicle Code.

SEC. 4. No appropriation is made by this act pursuant to Section 2231 or 2234 of the Revenue and Taxation Code or Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be because this act creates a new crime or infraction, changes the definition of a crime or infraction, or eliminates a crime or infraction. Furthermore, this act does not create any present or future obligation to reimburse any local agency or school district for any costs incurred because of this act.

CHAPTER 1071

An act to add Article 2.5 (commencing with Section 11165) to Chapter 2 of Title 1 of Part 4 of, and to repeal Sections 11161.5, 11161.6, and 11161.7 of, the Penal Code, relating to child abuse.

[Approved by Governor September 25, 1980. Filed with Secretary of State September 26, 1980.]

The people of the State of California do enact as follows:

SECTION 1. Section 11161.5 of the Penal Code is repealed.

SEC. 2. Section 11161.6 of the Penal Code is repealed.

SEC. 3. Section 11161.7 of the Penal Code is repealed.

SEC. 4. Article 2.5 (commencing with Section 11165) is added to Chapter 2 of Title 1 of Part 4 of the Penal Code, to read:



Article 2.5. Child Abuse Reporting

11165. As used in this article:

- (a) "Child" means a person under the age of 18 years.
- (b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 261.5 (unlawful sexual intercourse), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).
- (c) "Neglect" means the negligent failure of a person having the care or custody of any child to protect a child from severe malnutrition or medically diagnosed nonorganic failure to thrive. For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code shall not for that reason alone be considered a neglected child.
- (d) "Willful cruelty or unjustifiable punishment of a child" means a situation where 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 such child to be placed in such situation that his or her person or health is endangered.
- (e) "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.
- (f) "Abuse in out-of-home care" means situations of suspected physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.
- (g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.
- (h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential



care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

11166. (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she reasonably suspects has been the victim of child abuse shall report such suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or its emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any other person who had knowledge of or observes a child whom he or she reasonably suspects has been a victim of child abuse may report such suspected instance of child abuse to a child protective agency.

(d) When two or more persons who are required to report are present and jointly have knowledge of a suspected instance of child abuse, 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 such 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 such report.

(e) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any



sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

(f) A county probation or welfare department shall immediately or as soon as practically possible report by telephone every instance of suspected child abuse as defined in Section 11165 reported to it to the law enforcement agency having jurisdiction over the case, and to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and shall send a written report thereof within 36 hours of receiving the information concerning the incident to that agency.

A law enforcement agency shall immediately or as soon as practically possible report by telephone every instance of suspected child abuse reported to it to county social services and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and shall send a written report thereof within 36 hours of receiving the information concerning the incident to such agency.

11167. (a) A telephone report of suspected child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led such person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the suspected case of child abuse.

(c) Persons who may report pursuant to subdivision (c) of Section 11166 are not required to include their names. The identity of all persons who report under this article shall be confidential and disclosed only by court order or between child protective agencies or the probation department.

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. Such forms shall be distributed by the child protective agencies.

11169. A child protective agency shall forward to the Department of Justice a preliminary report in writing of every case of suspected child abuse which it investigates, whether or not any formal action is taken in the case. However, if after investigation the case proves to be unfounded no report shall be retained by the Department of Justice. If a report has previously been filed which has proved unfounded the Department of Justice shall be notified of that fact. The report shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the



Department of Justice.

11170. The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169 of any information maintained pursuant to Section 11110 which is relevant to the suspected instance of child abuse reported by the agency. The indexed reports retained by the Department of Justice shall be continually updated and shall not contain any unfounded reports. A child protective agency shall make such information available to the reporting medical practitioner, child custodian, or guardian ad litem appointed under Section 318 of the Welfare and Institutions Code, if he or she is treating or investigating a case of suspected child abuse.

When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, 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.

11171. (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 and determining the extent of such child abuse.

(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.

11172. (a) No child care custodian, medical practitioner or nonmedical practitioner reporting a suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this section unless it can be proved that a false report was made and the person knew or should have known that the report was false. No person required to make a report pursuant to this section, 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 causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

(b) Any person who fails to report as required by this article an instance of child abuse which he or she knows to exist or reasonably should know to exist is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars (\$500) or by both.

11174. The Department of Justice, in cooperation with the State



Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in subdivision (g) of Section 11165, in group homes or institutions and shall ensure that every investigation of such alleged child abuse is conducted in accordance with such regulations and guidelines.

SEC. 5. In reenacting the child abuse reporting law, it is the intent of the Legislature to clarify the duties and responsibilities of those who are required to report child abuse. The new provisions are designed to foster cooperation between child protective agencies and other persons required to report. Such cooperation will insure that children will receive the collective judgment of all such agencies and persons regarding the course to be taken to protect the child's interest.

In enacting Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of the Penal Code, the Legislature recognizes that the reporting of child abuse and any subsequent action by a child protective agency involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child. Therefore, it is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline.

In repealing Sections 11161.5, 11161.6, and 11161.7 of, and in reenacting the Child Abuse Reporting Law in Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of, the Penal Code, it is not the intent of the Legislature to alter the holding in the decision of *Landeros v. Flood* (1976), 17 Cal. 3d 399, which imposes civil liability for a failure to report child abuse.

It is the intent of the Legislature to encourage each county welfare department to establish within the department a toll-free number for receiving reports of child abuse 24 hours a day, seven days a week.

It is the intent of the Legislature to encourage the board of supervisors of each county to establish a committee composed of representatives from the county welfare department, local law enforcement agencies, county probation department, county health department and other persons representative of the population to be served, and any other person the board of supervisors deems appropriate, which would establish guidelines for the sharing of information and the coordination of the investigation of cases of child abuse.

It is the intent of the Legislature to encourage the county welfare or probation departments to promptly perform for each mandated report they receive and each report received pursuant to subdivision (b) of Section 11166 a thorough assessment to determine all of the following:

(a) The composition of the family or household, including the name, address, age, sex, and race of each child named in the report, and any siblings or other children in the same household or in the



care of the same adults.

(b) Whether there is reasonable suspicion to believe that any child in the family, household, or child-care facility is being abused or neglected and a determination of the person or persons apparently responsible for the abuse or neglect.

(c) The immediate and long-term risk to each child if he or she remains in the existing environment.

(d) The protective treatment and ameliorative services that appear necessary to help prevent further child abuse or neglect.

SEC. 6. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act pursuant to these sections because the duties, obligations, or responsibilities imposed on local agencies or school districts by this act are such that related costs are incurred as part of their normal operating procedures, and because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1072

An act to add Section 1157.5 to the Health and Safety Code, and to amend Sections 16702 and 16704 of the Welfare and Institutions Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1980. Filed with
Secretary of State September 26, 1980]

The people of the State of California do enact as follows:

SECTION 1. Section 1157.5 is added to the Health and Safety Code, to read:

1157.5. Upon request of the board of supervisors of any county which received public health services or funding, or both, during the fiscal year 1979-80 pursuant to Section 1157, the State Department of Health Services shall transfer the dollar value of such services or funding, or both, as an allocation to the county pursuant to Part 4.5 (commencing with Section 16700) of Division 9 of the Welfare and Institutions Code. For purposes of this section, the dollar value of such services or funding, or both, shall include the direct and indirect costs appropriated to the State Department of Health Services to provide public health services to the county pursuant to Section 1157 for the fiscal year preceding the effective date of the request to transfer funds, less any funds allocated from appropriations for child health and disability prevention programs as described in Article 3.4



DONALD H. FISUSH, J.D., C.L.U.
VOLUNTEER ADVOCATE FOR CHILDREN

2301 PINE KNOLL DR. #10
WALNUT CREEK, CA 94595
PHONE: 415-939-1019

August 8, 1978

AB3431(Ellis)-Suggested changes to proposed amendments as the bill is amended May 26, 1978.

- Sec.11165(e) should include "psychologists and optometrists" as non-medical practitioners.
- Sec.11166(f) should read the same as (e). The written report to the County Welfare Department should not have to wait for "the conclusion of the investigation". In many instances the family could be needing prompt social services or one already receiving social services and the agency should be fully informed in writing as soon as possible.
- Sec.11169 Reports should not be required to be sent to the Department of Justice unless it proves to be founded and court action is likely to be taken.
- Sec.11170 In the last sentence following the word "available" insert "to the other child protective service agencies in the county and". They should be advised so they can render the needed services which are their responsibility.
- Sec.11172(a) Before the word "required" insert: "whether or not". Persons who report who are not required to do so should also be exempt from liability.
- Sec11172(c) Delete "or with gross negligence". Wilful is sufficient. This change would result in various court interpretations and could result in unfounded reporting for fear of being accused of "gross negligence", especially by persons who are required to report but who are not fully aware of the evidences of child abuse..



**DEPARTMENT OF JUSTICE
REGULATIONS AND FORMS**

**DEPARTMENT OF JUSTICE REGULATIONS
FOR CHILD ABUSE REPORTS RECORDKEEPING**

ARTICLE 1: REPORT OF CHILD ABUSE

Section 900. Scope.

The Automated Child Abuse System (ACAS) is the centralized system for collecting reports of suspected child abuse and severe neglect pursuant to Penal Code section 11170. The ACAS is maintained by DOJ as a statewide reference file.

These regulations relate to the policies and practices of DOJ with regard to its Standard Reporting Form; its review and verification procedures for reports submitted; its notification procedures in response to reports and its procedures for processing reports submitted by reporting agencies with different investigative determinations; the scope of information released in response to valid inquiries; procedures for confirmation and notification regarding ACAS inquiries for peace officer pre-employment, TrustLine Registry, child care licensing and employment, and adoption and placement of children; and inquiries received from private citizens regarding their own record. These regulations also identify how DOJ tracks inquiries and responses thus creating an audit trail of all inquiries resulting in possible matches, and set forth procedures for record sealing orders received from the courts.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.9, 11169, 11170, Penal Code.

Section 901. Definitions.

(a) "Active Investigation" means the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, at a minimum: assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es) when appropriate and/or available; gathering and preserving evidence; determining whether the incident is substantiated, inconclusive, or unfounded; and preparing a report that will be retained in the files of the investigating agency.

(b) "Audit Trail" is the method used by DOJ to track inquiries to ACAS to determine the requestor and the response provided. (See § 910)

(c) "Automated Child Abuse System" (ACAS) means the current system used by DOJ to electronically store reports of child abuse submitted by investigating agencies. ACAS is also known as the Index and the Child Abuse Central Index. Child Abuse Central Index and the Index are the same terms as used in Penal Code section 11170.

(d) "Child" is the same term as defined in Penal Code section 11165.

(e) "Child Abuse" is the same term as defined in Penal Code section 11165.6.

(f) "Confirmation" is the DOJ process of contacting the agency that submitted the report to confirm that the underlying investigative report is still available and is not unfounded. (See § 908)

(g) "DOJ" means the Department of Justice.

(h) "General Neglect" is the same term as used in Penal Code section 11165.2.

(i) "Inconclusive Report" is the same term as defined in Penal Code section 11165.12(c). This category was originally termed "unsubstantiated report" and was renamed by Chapter 842 of the Statutes of 1997, effective January 1, 1998.

(j) "Investigative Report" or "Underlying Investigative Report" means original and supplemental investigative documents developed by an agency during an investigation of a child abuse incident and that resulted in a report to DOJ.

(k) "Possible Match" means DOJ staff has checked a specific name as the result of an inquiry and has, based on the name and other items of personal description (date of birth, social security number, driver's license number, or address), matched that name to an existing report(s) in ACAS. The match is considered possible because it has not been confirmed absolutely with positive matching processes such as a fingerprint comparison.

(l) "Report" means an entry in ACAS reporting the investigation of a suspected incident of child abuse or severe neglect. All mandatory information as specified in regulation § 903 must be included for the report to be entered into ACAS. (See § 903)

(m) "Severe Neglect" is the same term as used in Penal Code section 11165.2.

(n) "Submitting Agency" means the agency that forwarded the completed summary report on which an ACAS entry is based.

(o) "Substantiated Report" is the same term as defined in Penal Code section 11165.12(b).

(p) "Suspect" means a person who has been designated as a suspect in an agency's child abuse investigation and subsequently reported as such to DOJ.

(q) "Unfounded" is the same term as defined in Penal Code section 11165.12(a). Unfounded reports are not forwarded to DOJ for inclusion in the ACAS.

(r) "Unsubstantiated" means a report that is determined by a child abuse investigator not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect has occurred. (This category was renamed "inconclusive" by Chapter 842 of the Statutes of 1997, effective January 1, 1998.)

(s) "Verification" means the process DOJ uses to insure that the data entered into ACAS is accurately entered into ACAS. (See § 904)

(t) "Victim" means a person who has been designated as a victim in a child abuse investigative report and subsequently reported as such to DOJ.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165, 11165.2, 11165.6, 11165.9, 11165.12(a), 11165.12(b), 11165.12(c), 11169 and 11170(a), Penal Code; and Section 1596.60, Health and Safety Code.

Section 902. Purpose of ACAS.

The purpose of ACAS is to serve as the index of investigated reports of suspected child abuse and severe neglect maintained by DOJ pursuant to Penal Code section 11170(a). The ACAS consists only of those reports of child abuse and severe neglect that meet the criteria specified in the Child Abuse and Neglect Reporting Act (Penal Code section 11164; et seq.) and that are complete as specified by these regulations. The ACAS is a reference file and is used to refer authorized individuals or entities to the underlying child abuse investigative report maintained at the reporting agency. It is the responsibility of authorized individuals or entities to obtain and review the underlying investigative report and make their own assessment of the merits of the child abuse report. They shall not act solely upon ACAS information.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.9, 11169, 11170(a)(1) and (2), Penal Code.

Section 903. Standard Reporting Form for Reports of Child Abuse Maintained in ACAS.

(a) The "Child Abuse Summary Report" Form SS 8583 is the standard reporting form required to report investigative summaries of suspected incidents of child abuse and severe neglect to ACAS. Reporting agencies shall submit Form SS 8583 to DOJ after an active investigation has been conducted and the incident has been determined not to be unfounded. Reporting agencies must obtain and use the most recent version of the SS 8583 when submitting the report to DOJ. The most recent version of the SS 8583 must be the basis for any report in an automated format submitted to DOJ.

(1) If a report is submitted on a form pre-dating the current SS 8583, and DOJ receives an inquiry that requires a confirmation of the report, the information on the report originally submitted must comply with the reporting requirements of the current Form SS 8583. (See § 908)

(2) All information items on the standard report Form SS 8583 should be completed by the investigating agency. Certain information items on the SS 8583 must be completed by the investigating agency in order for it to be considered a "retainable report" by DOJ and entered into ACAS. Reports without these items will be returned to the contributor. These information items are:

(A) The complete name of the investigating agency and type of agency.

(B) The agency's report number or case name.

(C) The action taken by the investigating agency.

(D) The specific type of abuse.

(E) The victim(s) name, birth date or approximate age, and gender.

(F) Either the suspect(s) name or the notation "unknown;" birth date or approximate age, and gender.

(G) Verification (yes, no) that an active investigation was conducted and that the victim(s) were contacted. Verification (yes, no, no suspect) that suspect(s) were contacted and verification (yes, no, no witness) that witness(es) were contacted. An explanation is required if contacts were not made.

(H) Verification (yes, no) that the suspect was given written notice that his/her name will be placed in the Child Abuse Central Index per PC 11169(b). An explanation is required if no written notice was given.

(a) The following form shall be the standard reporting form for submitting summary reports of child abuse and severe neglect to DOJ:

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.6, 11165.9, 11165.12, 11166(h) & (i), 11168, 11169(a), 11169(b) and 11170(a)(1), Penal Code.

Section 904. DOJ Review and Verification of Submitted Summary Reports.

All submissions received by DOJ staff are reviewed to determine that they meet the definition of a report in these regulations. DOJ staff verifies only that the information entered into ACAS is consistent with the information as reported by the investigating agency. The DOJ presumes that the substance of the information provided is accurate and does not conduct a separate investigation to verify the accuracy of the investigation conducted by the submitting agency.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.9, 11169, and 11170(a)(2), Penal Code.

Section 905. DOJ Procedures for Notification When ACAS Shows Information Relevant to a Newly Received Report.

When DOJ receives a child abuse summary report containing the name of a victim or suspect that results in a possible match to a prior report in ACAS, DOJ will do the following:

(a) Notify the reporting agency of a prior report in ACAS in which there is a possible victim or suspect match. The notification will include the following information on the prior report in the Index: the name of the reporting agency; the report number; and the date of the report.

(b) Notify any agency that submitted a prior report in ACAS that DOJ has received a new report

containing a possible victim or suspect match to the report submitted previously by that agency.

(c) If the new report contains a suspect match to a prior report, notify the agency submitting the prior report that if its report was either unsubstantiated or inconclusive, it must be retained for at least ten (10) years from the date of the new report to DOJ.

(d) The notifications set forth in (a) through (c) will be made even if the agency submitting the new report is the same agency that submitted the prior report.

(e) All notifications will be made as soon as possible, but not later than three (3) working days after the new report is entered into ACAS.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.9, 11169, 11170(a)(3) and 11170(b)(1), Penal Code.

Section 906. DOJ Procedures for Processing Reports Submitted by Agencies with Different Investigative Determinations.

When DOJ receives separate reports from different agencies on the same incident of child abuse and severe neglect with different investigative determinations, DOJ will make a notation in ACAS of the different determinations. The agencies reporting the incidents will be notified in writing of the different determinations.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.9 and 11170(a)(2), Penal Code.

Section 907. ACAS Information Released in Response to Inquiries.

The information contained in the reports in ACAS is confidential, and is disclosed by DOJ staff only to those individuals and entities who are authorized by Penal Code sections 11170 and 11170.5 and any other provisions of law. These include:

(a) An agency conducting an active investigation of child abuse, or a district attorney who makes a request, will be provided all information in ACAS pertaining to the specific individual(s) being investigated. An agency conducting an active investigation of child abuse may request, and be provided, ACAS information prior to completion of the investigation and submission of the report required by Penal Code section 11169, if the information is needed for purposes of the current investigation. Such requests for information will receive a response from DOJ within one working day of receipt.

(b) Persons or entities who are making inquiries for purposes of pre-employment background investigations for peace officers, child care licensing or employment, adoption, or child placement will be provided suspect information. No information on victims will be provided. If there are multiple possible matches, only the possible name match that is closest to that of the inquiry will be provided. After matching the suspect's name, other items of personal description will be used to determine the closest possible match.

(c) Prior to July 1, 1998, persons or entities who made inquiries for TrustLine Registry purposes pursuant to Education Code section 8172 were provided only suspect information from substantiated reports in the Index regarding the person who is the subject of the inquiry. Since July 1, 1998, when the administrative authority for TrustLine transferred to DSS, suspect information from all reports (substantiated and inconclusive) in the Index is provided to DSS regarding the person who is the subject of the inquiry, pursuant to Health and Safety Code section 1596.877. If there are multiple possible matches, only the possible name match that is closest to that of the inquiry will be provided. After matching the suspect's name, other items of personal description will be used to determine the closest possible match. No information on victims will be provided.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.9, 11167.5, 11169, 11170, 11170.5 and 11174, Penal Code; Sections 1522.1, 1596.60 and 1596.877, Health and Safety Code.

Section 908. Procedure for Confirmation of ACAS Information for Purposes of Peace Officer Employment, TrustLine Registry, Child Care Licensing or Employment, Adoption or Placement of Children, and for When a Private Citizen Inquires About His/Her Own Record.

(a) When an inquiry is received for non-criminal investigations, including but not limited to pre-employment checks for peace officers, TrustLine Registry, child care licensing or employment, adoption placement of children (with the exception of temporary placement of children in emergency situations), or when a written and notarized request [see Penal Code section 11170(e)] is received from a private citizen to determine if he or she is listed in ACAS, and the inquiry results in a possible match to a suspect in ACAS, DOJ staff will make written contact with the agency that submitted the report to confirm that the underlying investigative report is still available, that the report submitted to DOJ meets current statutory and regulatory requirements for retention and dissemination, and that the report has not been determined to be unfounded.

(1) In the case of an inquiry for purposes of a non-criminal investigation, if the agency confirms that the underlying investigative report is still available, that the report submitted to DOJ meets current statutory and regulatory requirements for retention and dissemination, and that the report has not been determined to be unfounded, DOJ staff will release the information to the requesting agency.

(A) If the submitting agency advises DOJ that the underlying investigative report is no longer available, or that the report submitted to DOJ does not meet current statutory and regulatory requirements for retention and dissemination, or that the report has been determined to be unfounded, or if the submitting agency does not respond to the written notification within thirty days, DOJ staff will advise the requesting agency that there is no match to any report on file. DOJ will immediately delete the ACAS entry and destroy the associated paper records.

(2) In the case of a citizen inquiry, if the agency confirms that the underlying investigative report is still available, that the report submitted to DOJ meets current statutory and regulatory requirements for retention and dissemination, and that the report has not been determined to be unfounded, DOJ staff will notify the citizen in writing that he/she is listed

in ACAS as a suspect or victim and provide the name of the submitting agency, the report number, and the date of the report. DOJ staff will also notify the citizen of all non-criminal investigation disseminations of his/her record including the date of the dissemination, the agency to which the record was disseminated, and the purpose of the dissemination of his/her record.

(A) If the submitting agency advises DOJ that the underlying investigative report is no longer available, or that the report submitted to DOJ does not meet current statutory and regulatory requirements for retention and dissemination, or that the report has been determined to be unfounded, DOJ staff will advise the citizen of that fact in writing. The citizen will also be advised that DOJ will immediately delete the report from ACAS, and after thirty days will destroy the associated paper records. DOJ will immediately delete the ACAS entry and in thirty days, destroy the associated paper records.

(B) If the submitting agency cannot confirm the availability of the underlying investigative report, or that the report submitted to DOJ meets current statutory and regulatory requirements for retention and dissemination, or that the report has not been determined to be unfounded, or if the submitting agency does not respond to the written notification within thirty days, DOJ staff will advise the citizen in writing:

(1) that ACAS does have an entry, the name of the reporting agency, the report number, and the date of the report;

(2) that DOJ has contacted the reporting agency, but the agency has not or cannot confirm the availability of the underlying investigative report, that the report submitted to DOJ meets current statutory and regulatory requirements for retention and dissemination, and that the report has not been determined to be unfounded;

(3) that the citizen should contact the reporting agency directly if further information is needed; and

(4) that DOJ will immediately delete the entry in ACAS and after thirty days will destroy the associated paper records. DOJ, in accord, will immediately delete the ACAS entry and in thirty days destroy the associated paper records.

(b) The following form letter will be used to request confirmation of information in the ACAS:

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.11, 11167.5(b)(11), 11170(e), 11170.5, and 11170.6, Penal Code; and Section 1798.25, Civil Code.

Section 909. Notification in Response to Inquiries to ACAS Pertaining to Peace Officer Employment, TrustLine Registry, Child Care Licensing and Employment, Adoptions and Placement of Children.

Whenever a possible name match with a suspect is made on an ACAS report in response to inquiries for non-criminal investigations, including but not limited to pre-employment checks for peace officers, TrustLine Registry, child care licensing or employment, and adoptions or the placement of children (with the exception of temporary placement of children in emergency situations) and DOJ staff has confirmed that the underlying investigative report is still available, that the report submitted to DOJ meets current statutory and regulatory requirements for retention and dissemination, and that the report has not been determined to be unfounded, DOJ will release the possible match information to the inquiring agency. Concurrent with the release to the inquiring agency, DOJ staff will send notification to the individual whose name constitutes the possible match. This notice will advise the individual that the information was provided to the inquiring agency and will include the name of the reporting agency, the date of the report, and the report number.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11170(b)(5), and 11170(c) Penal Code.

Section 910. Audit Trail of Information Released from ACAS.

DOJ staff will maintain a record of all inquiries that result in a possible name match to a report maintained in ACAS. This record will include the response given. This record will establish the ACAS audit trail. A citizen making an inquiry regarding his/her own record will be informed of all non-criminal investigation disseminations of his/her record including the date of the dissemination, the agency submitting the request, and the purpose of the dissemination.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Section 11170(a), Penal Code; and Section 1798.25, Civil Code.

Section 911. Processing of Record Sealing Orders .

When orders are received from courts ordering the sealing of juvenile records per Welfare and Institutions Code sections 389 and 781, and/or for the sealing of adult records per Penal Code section 851.8, and there is a possible match to a juvenile or adult record in ACAS, the sealing order will be processed consistent with the advice provided by legal counsel.

NOTE: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 389 and 781, Welfare and Institutions Code; and Section 851.8, Penal Code.

**CHILD ABUSE SUMMARY REPORT
DEPARTMENT OF JUSTICE (DOJ) FORM SS 8583
Guidelines for Use and Completion of Form SS 8583**

(For Specific Requirements Refer to the Child Abuse Reporting Law, California Penal Code Sections 11165 through 11174.3)

For Immediate information on potential suspects/victims, please contact the Child Abuse Unit at (916) 227-3285.

Who Must Report

Interagency Reporting

Any police or sheriff's department, county welfare department, or county probation department (if designated by the county to receive mandated reports) must report every suspected incident of child abuse it receives to:

- the law enforcement agency having jurisdiction over the case
- the agency responsible for investigations under Welfare and Institutions Code Section 300
- the district attorney's office

DOJ Reporting

- An agency must report every incident of suspected child abuse for which it conducts an active investigation and determines not to be unfounded to DOJ on the Form SS 8583.

NOTE: Reports are not accepted from non-California agencies.

What Incidents Must Not Be Reported

Interagency Reporting

- Incidents specifically exempted under cooperative arrangements with other agencies in your jurisdiction.

DOJ Reporting

- Unfounded reports - Reports which are determined to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect as defined in Section 11165.6 PC (Section 11165.12 PC).
- Acts of nonexploitive, consensual sexual behavior between minors under the age of 14 years who are of similar age.
- Acts of negligence by a pregnant woman or other person(s) who adversely effect the well-being of a fetus.
- Child stealing as defined in Sections 277 PC and 278 PC, unless it involves sexual abuse, physical abuse, mental/emotional abuse, and/or severe neglect.
- Reasonable and necessary force by school employees to quell a disturbance threatening physical injury to person or damage to property (Section 11165.4 PC).
- Statutory rape, as defined in Section 261.5 PC, except violations of Section 261.5(d) PC.
- Mutual fights between minors (Section 11165.6 PC).

What Incidents Must Be Reported

- Abuse of a minor child, i.e., a person under the age of 18 years, involving any one of the below abuse types:

Interagency Reporting

- sexual abuse
- physical abuse
- general neglect
- mental/emotional abuse
- severe neglect

(Refer to Section 11165.1 through 11165.6 PC for PC citations and definitions)

DOJ Reporting

- All of the above, excluding general neglect.
- Deaths of minors resulting from abuse or neglect.

When Must the Report Be Submitted

Interagency Reporting

- Telephone notification - immediately or as soon as practical.
- Written notification - within 36 hours of receiving information concerning the incident.
- When an agency takes a report for which it lacks jurisdiction the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

DOJ Reporting

- A Form SS 8583 must be submitted after an active investigation has been conducted and the incident has been determined not to be unfounded. DOJ defines "active investigation" as: the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, at a minimum: assessing the nature and seriousness of the suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es); gathering and preserving evidence; determining whether the incident is substantiated, inconclusive or unfounded; and preparing a report that will be retained in the files of the investigating agency.

NOTE: No other form will be accepted in lieu of the Form SS 8583.

The suspect(s) must be notified in writing that he/she has been reported to the Child Abuse Central Index per PC Section 11169(b).

What Information is Required

General Instructions

- All information blocks contained on the Form SS 8583 should be completed by the investigating agency. If information is not available, indicate "UNK" in the applicable information block.

Specific Instructions

INFORMATION BLOCKS ON THE FORM SS 8583 WHICH ARE SHADED GRAY MUST BE COMPLETED. **THE SUBMITTED FORM WILL BE RETURNED TO THE CONTRIBUTOR WITHOUT FURTHER DEPARTMENT OF JUSTICE ACTION IF THE CONTRIBUTOR FAILS TO COMPLETE ANY OF THE FOLLOWING ITEMS:** the agency name and type; the agency's report number or case name; the action taken by the investigating agency; the specific type of abuse; the victim's name, birthdate or approximate age, and gender; and the suspect's name and birthdate or approximate age, and gender. If the suspect is not known, UNKNOWN must be entered. Verification must be provided that an active investigation was conducted, that victim(s), and any known suspect(s), and witness(es) were contacted. An explanation must be provided if these contacts were not made. Verification must be provided that the suspect was given written notification that he/she has been reported to the Child Abuse Central Index per Section 11169(b) PC. An explanation must be provided if there was no notification.

Section A. "INVESTIGATING AGENCY," information block 10. "ACTION TAKEN" or 10A. "SUPPLEMENTAL INFORMATION" must be completed in accordance with the following definitions (Check one of the boxes):

<p>10. ACTION TAKEN (check only one box):</p> <p><input type="checkbox"/> (1) SUBSTANTIATED (Abuse more likely than not to have occurred)</p> <p><input type="checkbox"/> (2) INCONCLUSIVE (Insufficient evidence of abuse, not unfounded)</p>	<p>10A. SUPPLEMENTAL INFORMATION (Attach copy of original report)</p> <p><input type="checkbox"/> (a) INCONCLUSIVE</p> <p><input type="checkbox"/> (b) UNFOUNDED (false report, accidental, improbable)</p> <p><input type="checkbox"/> (c) ADDITIONAL INFORMATION</p>
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10. ACTION TAKEN

- ① SUBSTANTIATED - Abuse, as defined in Section 11165.6 PC, determined to have more likely than not occurred.
- ② INCONCLUSIVE - Report determined not to be unfounded, but there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6 PC, occurred.

10A. SUPPLEMENTAL INFORMATION - Only use this section to update information previously submitted on Form SS 8583.

- ⓐ INCONCLUSIVE - A previously submitted Form SS 8583 indicated as "SUBSTANTIATED" is being reclassified to "INCONCLUSIVE".
- ⓑ UNFOUNDED - A previously submitted Form SS 8583 indicated as "SUBSTANTIATED," "UNSUBSTANTIATED," or "INCONCLUSIVE" is being reclassified to "UNFOUNDED."
- ⓒ ADDITIONAL INFORMATION - Supplementary information is being provided for a previously submitted Form SS 8583.

Where To Send The Report, Form SS 8583

(For DOJ Reporting only)
Bureau of Criminal Information and Analysis
P. O. Box 903387
Sacramento, CA 94203-3870
ATTENTION: Child Abuse Unit

REMEMBER

Submit completed Form SS 8583 to DOJ as soon as possible after completion of the investigation. Submitting case information may contribute to the success of another investigation. It is essential that the report be complete, accurate and timely to provide the maximum benefit in protecting children and identifying and prosecuting suspects. If you have questions about DOJ REPORTING or need a victim or suspect name check, call the DOJ Child Abuse Unit at (916) 227-3285 or CALNET 498-3285.



CHILD ABUSE OR SEVERE NEGLECT INDEXING FORM

To be completed by Submitting Child Protective Agency pursuant to Penal Code section 11169

INITIAL REPORT

AMENDED REPORT (attach copy of original BCIA 8583. Complete sections A, C, and all other applicable fields)

A. SUBMITTING AGENCY	SUBMITTING AGENCY (Enter complete name and check type)				<input type="checkbox"/> POLICE <input type="checkbox"/> WELFARE <input type="checkbox"/> SHERIFF <input type="checkbox"/> PROBATION		AGENCY REPORT NUMBER/CASE NAME					
	AGENCY ADDRESS Street				City				State		Zip Code	
	NAME OF SUBMITTING PARTY				TITLE				AGENCY TELEPHONE			
B. INCIDENT INFORMATION	DATE OF REPORT		The finding that allegations of child abuse or severe neglect are not unfounded is: (Check only one box)									
			<input type="checkbox"/> SUBSTANTIATED (Penal Code section 11165.12(b))			<input type="checkbox"/> INCONCLUSIVE (Penal Code section 11165.102(c))						
B. INCIDENT INFORMATION	DATE OF INCIDENT		TYPE OF ABUSE (Check one or more)		<input type="checkbox"/> PHYSICAL INJURY <input type="checkbox"/> MENTAL/EMOTIONAL SUFFERING <input type="checkbox"/> SEVERE NEGLECT <input type="checkbox"/> WILLFUL HARMING/ENDANGERMENT		<input type="checkbox"/> SEXUAL ABUSE, ASSAULT, EXPLOITATION <input type="checkbox"/> UNLAWFUL CORPORAL PUNISHMENT OR INJURY					
C. AMENDED REPORT INFORMATION	Original Agency Report Number/Case Name: _____				Date of Incident: _____		Type of Abuse: _____					
	<input type="checkbox"/> CHANGED TO INCONCLUSIVE <input type="checkbox"/> ADDED ADDITIONAL INFORMATION <input type="checkbox"/> CHANGED TO SUBSTANTIATED <input type="checkbox"/> CORRECTED REPORT INFORMATION <input type="checkbox"/> NOW UNFOUNDED <input type="checkbox"/> UNDERLYING INVESTIGATIVE FILE NO LONGER AVAILABLE											
Comment:												
VICTIM(S)	NAME: Last First Middle			AKA			DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
	DID VICTIM'S INJURIES RESULT IN DEATH?			IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) W&I)?								
	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN			<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN								
VICTIM(S)	NAME: Last First Middle			AKA			DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
	DID VICTIM'S INJURIES RESULT IN DEATH?			IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) W&I)?								
	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN			<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN								
VICTIM(S)	NAME: Last First Middle			AKA			DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
	DID VICTIM'S INJURIES RESULT IN DEATH?			IS VICTIM DEVELOPMENTALLY DISABLED (4512(a) W&I)?								
	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN			<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN								
D. INVOLVED PARTIES SUSPECT(S)	NAME: Last First Middle			AKA			DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
	ADDRESS Street City State Zip Code			HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER		DRIVER'S LICENSE NUMBER		
	RELATIONSHIP TO VICTIM: <input type="checkbox"/> PARENT/STEPPARENT <input type="checkbox"/> SIBLING <input type="checkbox"/> OTHER RELATIVE <input type="checkbox"/> FRIEND/ACQUAINTANCE <input type="checkbox"/> STRANGER											
	NAME: Last First Middle			AKA			DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
ADDRESS Street City State Zip Code			HGT	WGT	EYES	HAIR	SOCIAL SECURITY NUMBER		DRIVER'S LICENSE NUMBER			
RELATIONSHIP TO VICTIM: <input type="checkbox"/> PARENT/STEPPARENT <input type="checkbox"/> SIBLING <input type="checkbox"/> OTHER RELATIVE <input type="checkbox"/> FRIEND/ACQUAINTANCE <input type="checkbox"/> STRANGER												
OTHER	NAME: Last First Middle						DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
	NAME: Last First Middle						DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
	NAME: Last First Middle						DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
	NAME: Last First Middle						DOB		Approx. AGE	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE *	
* RACE CODES: W - White D - Cambodian B - Black G - Guamanian H - Hispanic U - Hawaiian I - American Indian K - Korean F - Filipino L - Laotian P - Pacific Islander S - Samoan C - Chinese V - Vietnamese J - Japanese O - Other A - Other Asian X - Unknown								<input type="checkbox"/> CHECK HERE IF ADDITIONAL SHEET(S) ATTACHED			FOR DOJ USE ONLY R C N A G Y	

Print

SUSPECTED CHILD ABUSE REPORT

Reset Form

To Be Completed by Mandated Child Abuse Reporters
Pursuant to Penal Code Section 11166

CASE NAME: _____

PLEASE PRINT OR TYPE

CASE NUMBER: _____

A. REPORTING PARTY	NAME OF MANDATED REPORTER		TITLE		MANDATED REPORTER CATEGORY				
	REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS			Street	City	Zip	DID MANDATED REPORTER WITNESS THE INCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		
	REPORTER'S TELEPHONE (DAYTIME) ()		SIGNATURE		TODAY'S DATE				
B. REPORT NOTIFICATION	<input type="checkbox"/> LAW ENFORCEMENT <input type="checkbox"/> COUNTY PROBATION		AGENCY						
	<input type="checkbox"/> COUNTY WELFARE / CPS (Child Protective Services)								
	ADDRESS			Street	City	Zip	DATE/TIME OF PHONE CALL		
C. VICTIM One report per victim	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY		
	ADDRESS			Street	City	Zip	TELEPHONE ()		
	PRESENT LOCATION OF VICTIM			SCHOOL		CLASS	GRADE		
	PHYSICALLY DISABLED? <input type="checkbox"/> YES <input type="checkbox"/> NO	DEVELOPMENTALLY DISABLED? <input type="checkbox"/> YES <input type="checkbox"/> NO	OTHER DISABILITY (SPECIFY)		PRIMARY LANGUAGE SPOKEN IN HOME				
	IN FOSTER CARE? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE: <input type="checkbox"/> DAY CARE <input type="checkbox"/> CHILD CARE CENTER <input type="checkbox"/> FOSTER FAMILY HOME <input type="checkbox"/> FAMILY FRIEND <input type="checkbox"/> GROUP HOME OR INSTITUTION <input type="checkbox"/> RELATIVE'S HOME			TYPE OF ABUSE (CHECK ONE OR MORE) <input type="checkbox"/> PHYSICAL <input type="checkbox"/> MENTAL <input type="checkbox"/> SEXUAL <input type="checkbox"/> NEGLECT <input type="checkbox"/> OTHER (SPECIFY)				
	RELATIONSHIP TO SUSPECT			PHOTOS TAKEN? <input type="checkbox"/> YES <input type="checkbox"/> NO		DID THE INCIDENT RESULT IN THIS VICTIM'S DEATH? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK			
	VICTIM'S SIBLINGS				VICTIM'S PARENTS/GUARDIANS				
NAME		BIRTHDATE	SEX	ETHNICITY	NAME		BIRTHDATE	SEX	ETHNICITY
1. _____		3. _____		2. _____		4. _____			
NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY		
ADDRESS			Street	City	Zip	HOME PHONE ()	BUSINESS PHONE ()		
NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY		
ADDRESS			Street	City	Zip	HOME PHONE ()	BUSINESS PHONE ()		
SUSPECT'S NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY		
ADDRESS			Street	City	Zip	TELEPHONE ()			
OTHER RELEVANT INFORMATION									
E. INCIDENT INFORMATION	IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX <input type="checkbox"/>				IF MULTIPLE VICTIMS, INDICATE NUMBER: _____				
	DATE / TIME OF INCIDENT			PLACE OF INCIDENT					
	NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incidents involving the victim(s) or suspect)								

SS 8572 (Rev. 12/02)

DEFINITIONS AND INSTRUCTIONS ON REVERSE

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code Section 11169 to submit to DOJ a Child Abuse Investigation Report Form SS 8583 if (1) an active investigation was conducted and (2) the incident was determined not to be unfounded.

WHITE COPY-Police or Sheriff's Department; BLUE COPY-County Welfare or Probation Department; GREEN COPY- District Attorney's Office; YELLOW COPY-Reporting Party

DEFINITIONS AND GENERAL INSTRUCTIONS FOR COMPLETION OF FORM SS 8572

All Penal Code (PC) references are located in Article 2.5 of the PC. This article is known as the Child Abuse and Neglect Reporting Act (CANRA). The provisions of CANRA may be viewed at: <http://www.leginfo.ca.gov/calaw.html> (specify "Penal Code" and search for Sections 11164-11174.3). A mandated reporter must complete and submit the form SS 8572 even if some of the requested information is not known. (PC Section 11167(a).)

I. MANDATED CHILD ABUSE REPORTERS

- Mandated child abuse reporters include all those individuals and entities listed in PC Section 11165.7.

II. TO WHOM REPORTS ARE TO BE MADE ("DESIGNATED AGENCIES")

- Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department (not including a school district police or security department), the county probation department (if designated by the county to receive mandated reports), or the county welfare department. (PC Section 11165.9.)

III. REPORTING RESPONSIBILITIES

- Any mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall report such suspected incident of abuse or neglect to a designated agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof *within 36 hours* of receiving the information concerning the incident. (PC Section 11166(a).)
- No mandated reporter who reports a suspected incident of child abuse or neglect shall be held civilly or criminally liable for any report required or authorized by CANRA. Any other person reporting a known or suspected incident of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by CANRA unless it can be proven the report was false and the person knew it was false or made the report with reckless disregard of its truth or falsity. (PC Section 11172(a).)

IV. INSTRUCTIONS

- **SECTION A - REPORTING PARTY:** Enter the mandated reporter's name, title, category (from PC Section 11165.7), business/agency name and address, daytime telephone number, and today's date. Check yes-no whether the mandated reporter witnessed the incident. The signature area is for either the mandated reporter or, if the report is telephoned in by the mandated reporter, the person taking the telephoned report.

IV. INSTRUCTIONS (Continued)

- **SECTION B - REPORT NOTIFICATION:** Complete the name and address of the designated agency notified, the date/time of the phone call, and the name, title, and telephone number of the official contacted.
- **SECTION C - VICTIM (One Report per Victim):** Enter the victim's name, address, telephone number, birth date or approximate age, sex, ethnicity, present location, and, where applicable, enter the school, class (indicate the teacher's name or room number), and grade. List the primary language spoken in the victim's home. Check the appropriate yes-no box to indicate whether the victim may have a developmental disability or physical disability and specify any other apparent disability. Check the appropriate yes-no box to indicate whether the victim is in foster care, and check the appropriate box to indicate the type of care if the victim was in out-of-home care. Check the appropriate box to indicate the type of abuse. List the victim's relationship to the suspect. Check the appropriate yes-no box to indicate whether photos of the injuries were taken. Check the appropriate box to indicate whether the incident resulted in the victim's death.
- **SECTION D - INVOLVED PARTIES:** Enter the requested information for: Victim's Siblings, Victim's Parents/Guardians, and Suspect. Attach extra sheet(s) if needed (provide the requested information for each individual on the attached sheet(s)).
- **SECTION E - INCIDENT INFORMATION:** If multiple victims, indicate the number and submit a form for each victim. Enter date/time and place of the incident. Provide a narrative of the incident. Attach extra sheet(s) if needed.

V. DISTRIBUTION

- **Reporting Party:** After completing Form SS 8572, retain the yellow copy for your records and submit the top three copies to the designated agency.
- **Designated Agency:** *Within 36 hours* of receipt of Form SS 8572, send **white copy** to police or sheriff's department, **blue copy** to county welfare or probation department, and **green copy** to district attorney's office.

ETHNICITY CODES

1 Alaskan Native	6 Caribbean	11 Guamanian	16 Korean	22 Polynesian	27 White-Armenian
2 American Indian	7 Central American	12 Hawaiian	17 Laotian	23 Samoan	28 White-Central American
3 Asian Indian	8 Chinese	13 Hispanic	18 Mexican	24 South American	29 White-European
4 Black	9 Ethiopian	14 Hmong	19 Other Asian	25 Vietnamese	30 White-Middle Eastern
5 Cambodian	10 Filipino	15 Japanese	21 Other Pacific Islander	26 White	31 White-Romanian

ORDER

IT IS SO ORDERED.

Chief Justice

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California and over the age of eighteen years. I am not a party to the within action. My business address is 234 East Colorado Boulevard, Suite 750, Pasadena, California 91101.

I am readily familiar with the practice of Esner, Chang & Boyer for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, the same day I submit it for collection and processing for mailing. I served the document(s) listed below by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Date Served: December 12, 2013

Document Served: Motion for Judicial Notice

Parties Served:

Norman J. Watkins, Esq.
Shannon L. Gustafson, Esq.
Lynberg & Watkins
1100 Town & Country Road, Suite 1450
Orange, CA 92868
(Attorneys for Defendants County of San Bernardino; Sergeant Jeffrey Bohner, Deputy Kimberly Swanson, and City of Yucaipa)

Christopher J. Keane, Esq.
The Keane Law Firm, P.C.
548 Market Street, #23851
San Francisco, CA 94104
(Attorneys for Plaintiff Brayden Hanson, a minor, by and through his Guardian ad Litem, Lauri Hanson)

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Pasadena, California.

Executed on December 12, 2013, at Pasadena, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Carol Miyake