

## UPDATED INFORMATIVE DIGEST

Senate Bill (SB) 39 (Chapter 468, Statutes of 2007) added Section 10850.4 to the Welfare and Institutions (W&I) Code, and specifically requires the custodian of records for a county child welfare agency to release specified child fatality information to the public. This statute is promulgated by MPP sections 31-502.3 through .35, which have been repealed, rewritten and expanded in order to meet the conditions of the California Superior Court decision in *Butterfield v. Lightbourne*.

The W&I Code section 10850.4(c) indicates specific documents required for disclosure when a child fatality was the result of abuse and/or neglect and differentiates which types of documents are released when the child resided with a parent/guardian rather than a foster care provider. This statute was promulgated in MPP sections 31-502.33 and .34 and the court decision found that these regulations erroneously required that abuse and/or neglect be inflicted by a parent/guardian or a foster care provider in order to prompt disclosure. However, the court decision found that conditioning the release of information upon the identity of the perpetrator is arbitrary and leads to inconsistencies in reporting. Accordingly, existing language has been replaced and expanded to address a more broad range of frequent and/or complicated scenarios encountered by county child welfare services (CWS) agencies, including abuse and/or neglect inflicted by a parent, guardian, foster care provider, other known individual, non-residential child care, by an unidentified individual or by a combination thereof.

The decision also found that the regulations in MPP section 31-502 erroneously use the terms “resulted in” rather than “led to” in describing the causality of abuse and/or neglect that “resulted in” the death of a child. Because W&I Code section 10850.4(b) prompts disclosure for cases where abuse and/or neglect “led to” a child’s death, the court decision found the Department’s use of the terms “resulted in” problematically required that a child’s death be the direct result of abuse and/or neglect in order to prompt disclosure of case file information. This excludes cases in which abuse and/or neglect contributed to the child’s death but were not the direct cause. Accordingly, the new regulations provide a more expansive clarification of the circumstances that prompt a determination that abuse and/or neglect resulted in a child’s death. Specifically, such a determination was expanded to cases where abuse and/or neglect were a material contributing factor to the child’s death.

Additionally, the court decision called for clarification of regulations regarding disclosure of licensing records for non-residential licensed child care providers. Such records are typically included within juvenile case file records maintained by CWA agencies in most counties. The W&I Code section 10850.4(o) explicitly states that the custodian of records, i.e. CWA agencies, shall not be required to obtain records not contained in the case file in order to meet the statutory disclosure requirements. Because of contention regarding the release of such records, clarification has been added as verified by the plaintiffs in the court decision.

## Post-hearing changes

The regulations were noticed August 29, 2014. One written testimony was received as a result of the public hearings; the following changes were made:

Section 31-502.23 – The Department agrees with the testifier that the grammar of this sentence was incorrect; the grammar has been corrected. Therefore, the section is changed to read:

- .23 Residence of child at the time of death, ~~and at the time of that the abuse and/or neglect occurred that~~ which resulted in the child's death as described in Section 31-502.13.

Section 31-502.4 – The Department agrees with the testifier that the current Section 31-502.4 cross-references provisions that will no longer exist when the new regulations are adopted and, therefore, certain subsections of Section 31-502.4 will need to be revised to list the correct cross-reference. Therefore, the section is changed to read:

- .43 If disclosure of information about a child, including the deceased child or any sibling of the deceased child, as listed in Sections ~~31-502.331(a)~~ 31-502.31 through ~~(g) and Sections 31-502.41(a) through (k)~~ 31-502.37, may be detrimental to the well-being of another child, counsel for that child may petition the juvenile court to prevent the release of any document or part of a document requested pursuant to Welfare and Institutions Code Section 827.
- .46 When a public request is made for documents other than those listed in Sections ~~31-502.331(a)~~ 31-502.31 through ~~(g) and Sections 31-502.341(a) through (l)~~ 31-502.37, the county child welfare agency shall only release this information upon an order from the juvenile court pursuant to Welfare and Institutions Code Section 827.