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October 24, 2017

ALL COUNTY LETTER (ACL) NO. 17-85

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order
- ☒ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY PROBATION OFFICERS
ALL COUNTY CHIEF PROBATION OFFICERS
ALL COUNTY BOARDS OF SUPERVISORS
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: **ASSESSING AND INVESTIGATING REFERRALS INVOLVING
THIRD PARTY PERPETRATORS OF CHILD ABUSE OR
NEGLECT**

REFERENCE: PENAL CODE SECTION [11165.6](#); [11167\(e\)](#); [11169\(a\)\(c\)](#);
WELFARE AND INSTITUTIONS CODE SECTION [300](#); [361\(d\)](#);
[361.7](#); MANUAL OF POLICIES AND PROCEDURES (MPP) [31-002\(C\)\(9\)](#), [31-002\(n\)\(1\)](#); [31-021](#); [31-100](#); [31-101.3](#); [31-105](#); [31-310.1](#); ACL [05-09](#); ACL [12-21](#); [ALL COUNTY INFORMATION NOTICE \(ACIN\) I-13-09](#); [ASSEMBLY BILL \(AB\) 717, CHAPTER 468, STATUTES OF 2011](#); [STRUCTURED DECISION MAKING \(SDM\)® POLICIES AND PROCEDURES MANUAL](#).

The purpose of this ACL is to provide county child welfare services (CWS) agencies with clarification on their role as it pertains to assessing, investigating and offering services in situations where the child's health or safety is endangered by an individual other than the child's legal parent or guardian. A third party perpetrator, defined for the purpose of this ACL, is any person who is not the legal parent or guardian and perpetrates abuse or neglect of a child.

BACKGROUND

When an allegation of child abuse or neglect is made to the county child abuse hotline, the screener assesses if the allegation made meets the definition of abuse or neglect.

Child abuse and neglect are defined in Penal Code (PC) Section [11165.6](#) and Manual of Policies and Procedures (MPP) Section [31-002\(c\)\(9\)](#) and [31-002\(n\)\(1\)](#). Under PC Section [11165.6](#), child abuse or neglect can be inflicted by any person. As required by MPP Section [31-101.3](#), counties shall respond to all referrals for service alleging that a child is endangered by abuse or neglect by completing the Emergency Response (ER) Protocol or conducting an in-person investigation immediately or within ten days.

As of July 1, 2016, all counties in California are using the Structured Decision Making (SDM)® hotline tool to assess referrals for child abuse or neglect. All counties receive funding to support the use of the evidence-based SDM® suite of assessment tools and are expected to properly utilize the tool in accordance with the SDM® Policies and Procedures Manual, which includes definitions to ensure quality and consistency in its usage. Findings from the 2016 Child and Family Services Review (CFSR) identified the need to strengthen risk and safety assessment and management in order to ensure that children are protected from abuse and neglect and are safely maintained in their homes whenever possible and appropriate. The California Department of Social Services (CDSS) is committed to improving quality and consistent use of the assessment tools provided by the SDM® system. Further guidance to counties is anticipated due to the CFSR findings requiring the state to address improvements to safety and risk assessments in its Program Improvement Plan.

HOTLINE SCREENING AND COMPLETING THE ER PROTOCOL

In order to ensure an accurate assessment using the SDM® hotline tool, county social workers must use the appropriate definitions provided in the [SDM® Policies and Procedures Manual](#). This includes assessing allegations involving legal guardians, caregivers and members of the household who may not be the parent of the child as defined below:

“Legal guardian” is defined as:

“A person who has the legal authority and duty to care for a child.”

“Caregiver” is defined as:

“An adult, parent or guardian in the household who provides care or supervision for the child.”

“Household” is defined as:

“All persons who have significant in-home contact with the child, including those who have a familial or intimate relationship with any person in the home. This may include persons who have an intimate relationship with a parent in the household (boyfriend or girlfriend) but may not physically live in the home or a relative where the legal parent allows the relative authority in parenting and caregiving decisions.”

County Policies and Procedures

When conducting assessments and investigations, best practice indicates that the social worker should assess all household members as defined by SDM®, as well as any additional person who has significant in-home contact with the child, in the client notebook associated with the referral. Counties should verify that their policies and procedures are reflective of this practice which acts as a reminder that the social worker should be assessing the potential risk to child safety by *all* individuals living in, as well as having significant access to, the household, regardless of their relationship to the child.

Additionally, counties have encountered problems when not everyone in the household has been assessed and an individual eventually found to be responsible for the abuse or neglect of the child was not entered in to the client notebook on the original referral. If a referral results in opening a case and the referral has since been closed, the Child Welfare Services/Case Management System (CWS/CMS) does not allow a user to add a client and substantiate on the closed referral in the event that later evidence (e.g., results of law enforcement's investigation) reveals the perpetrator of the abuse. This prevents counties from substantiating allegations involving the perpetrator and referring the individual to the Child Abuse Central Index (CACI), if appropriate.

**INVESTIGATING CHILD ABUSE OR NEGLECT BY THIRD PARTY PERPETRATORS
IN THE HOUSEHOLD**

When the county receives a report involving a perpetrator who is not a parent or legal guardian, such as a stepparent or extended family member, the county must assess if the parent knew, or reasonably should have known about the abuse or neglect and assess whether an allegation of General Neglect: Failure to Protect, or any other allegation may apply to the parent or legal guardian.

In the event that a child is found to have been or is currently at substantial risk of abuse or neglect involving a non-parent household member, the household member may not be entitled to court-ordered services. In these cases, counties are encouraged to work with their community agencies, including local family resource centers and community-based non-profit organizations, to provide voluntary services to non-parental household members, if appropriate. When determining whether or not to offer services to a non-parent caregiver, the county should consider the best interests of the child, the nature and severity of the abuse or neglect, if the involved person is likely to be a permanent fixture in the child's life (i.e., a married stepparent or grandparent as opposed to a short-term significant other or roommate) and if providing services to that person will improve long-term family function and stability.

For example, a parent may struggle to maintain their sobriety if their spouse (the child's stepparent) continues to abuse substances. In another example, grandparents who provide essential childcare, allowing the parent to work, may benefit from culturally sensitive guidance on appropriate discipline and level of supervision. In both of these situations, the simple removal of the dangerous person from the child's life may not be realistic and possibly places the child at risk of other harm due to further disrupting the family's stability.

The appropriate provision of services to non-parent caregivers may serve the best interests of the child and prevent other, more costly, child welfare interventions in the future. Counties wishing to find out more about funding available for community-based child abuse prevention and treatment programs are encouraged to contact the Office of Child Abuse Prevention at <http://www.cdss.ca.gov/inforesources/OCAP> or (800) 777-2515.

Non-Parent Minor Perpetrators

Circumstances may arise where the abuse or neglect occurs within the home, but the perpetrator is a non-parent under the age of 18. The county hotline screener must still assess any referral indicating a possible failure or inability to protect involving the parent that places the child at risk. The county, in consultation with county counsel and at its discretion, may choose to investigate and substantiate an allegation involving a minor perpetrator. When doing so, best practice indicates that the county considers several factors including, but not limited to, the following:

- The relationship between the perpetrator and the victim.
- The ages and developmental levels of the perpetrator and victim.
- Whether the action constitutes developmentally normal behavior (i.e., sexual exploration between two pre-school aged children, or physical aggression between siblings, if the behavior was not extreme and the parents responded appropriately).
- If the perpetrator has the developmental ability and capacity to understand the gravity of his or her actions or acted with willful disregard to the danger, pain or fear of the other child.
- The severity and frequency of the alleged abuse.
- If the action negatively affects the long-term safety and well-being of either child.

INVESTIGATING CHILD ABUSE OR NEGLECT BY PERPETRATORS WHO ARE NOT IN THE HOUSEHOLD

In the event that abuse or neglect is alleged to involve a person who is not in the household, the county should cross-report the allegation to law enforcement, community

care licensing or other authority, as appropriate, for investigation. However, this cross report does not absolve the county of the responsibility to conduct an assessment to determine if the parent or legal guardian was appropriately protective of the child. If, after following the ER protocol and assessments outlined in MPP [31-105](#), the county has reason to believe the legal parents or guardians either are failing or unable to protect the child from abuse, the county is to initiate an ER in-person investigation. If, at the end of the investigation, the county finds that the child has suffered or is at substantial risk of suffering serious harm as a result of the parents failure or inability to adequately supervise or protect the child, the county may substantiate an allegation of Failure to Protect, and open a case for services to improve the parent's ability to protect their child from harm. This scenario also applies when a child is commercially sexually exploited by a third party, in addition to a child who is abused by any other individual not within the household.

Unknown Perpetrators

In [ACL 05-09](#), the CDSS clarified that counties can allege and substantiate allegations involving an unknown perpetrator and clarified a naming convention for unknown perpetrators. The ACL [05-09](#) gives guidance on how to indicate in CWS/CMS that a perpetrator was not interviewed and how to document the reason why the interview did not take place.

Investigations Conducted with Law Enforcement

Allegations involving third party perpetrators who are not in the child's household are often reported to and investigated by law enforcement in addition to a CWS agency. Depending on the nature of the allegations or the existence of other law enforcement investigations in the same household, law enforcement may request that CWS postpone their own investigation of a suspected perpetrator until the law enforcement investigation has been concluded.

It is appropriate that CWS coordinate its investigation with law enforcement's investigation, to ensure the child's safety. In the event that CWS is in possession of evidence that a child's safety may be endangered within the home, CWS must determine what actions are necessary to maintain the safety of the child while the investigation is underway.

Often, law enforcement investigations may request that the investigating social worker "stand down" for longer than the 30 day timeframe needed to close a referral, in order to avoid jeopardizing a criminal investigation. In such a situation, if the CWS agency has determined the child's safety is not at risk, the social worker may close the referral with a disposition of "inconclusive" and note that he or she was unable to fully investigate due to a law enforcement investigation. The [ACIN I-13-09](#) instructed counties that

receipt of any subsequent information that could alter a determination should be additionally recorded and prompt a county to consider whether to re-open or create a new referral, resulting in a new investigation, and possibly a new outcome. This means the conclusion of the law enforcement investigation may prompt the county to open a new associated referral in order to conduct its own investigation, or the county may have enough additional information to update the disposition in the original referral, ensuring to document the reasons for the change.

In some situations, the county may not have the opportunity to interview the perpetrator or victim of the alleged crime. This may be especially appropriate in situations where the alleged perpetrator is a dangerous criminal such that a normal CWS investigation cannot be safely conducted or where an interview for a criminal investigation has been conducted and it is believed additional interviewing would be traumatic to the child. In these situations, the county may substantiate an allegation based on the outcome of the law enforcement investigation and/or criminal trial along with any other information gathered during the course of the child welfare investigation, as appropriate. Such a substantiation allows the county CWS agency to accurately document the allegations and investigation outcomes involving the alleged perpetrator of child abuse or neglect. In such a circumstance, the county should document the investigation steps taken, including interviews with law enforcement, court officials or others who provided the information to support the substantiation.

If substantiation is made on the basis of a law enforcement investigation without an “active investigation” by the CWS agency, the CWS agency shall not submit the results to the CACI. Per PC Section [11167\(e\)](#), an individual may be placed on the CACI only as the result of an “active investigation” conducted by CWS, which must 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. **County social workers and their supervisors should work closely with their county counsel to determine whether they have met the requirement for an “active investigation” in a particular case. The CWS agency may make a report to the CACI only if the CWS agency substantiated an allegation based on their county agency's own “active investigation.” If relying on the results of law enforcement or other investigation without an “active investigation” by the CWS agency, the CWS agency may choose to substantiate but should not refer the perpetrator to CACI.**

In conclusion, counties should review their policies and procedures and incorporate these instructions regarding investigating, assessing, and documenting allegations involving third party perpetrators previously discussed, including but not limited to, non-parent/non-guardians, non-household members, unknown and minor perpetrators within

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the household. When an allegation of child abuse or neglect is made involving a third party perpetrator, the county shall always assess and evaluate the referral by using the ER protocol or conducting an in-person investigation.

For more information on this ACL, contact the Child Welfare Policy and Program Development Bureau at (916) 651-6160.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

c: Child Welfare Directors Association
Chief Probation Officers of California