

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



April 26, 2005

ALL COUNTY LETTER NO. 05-09

TO: ALL COUNTY CHILD WELFARE DIRECTORS
ALL CDSS LICENSING DISTRICT OFFICES
ALL CDSS ADOPTIONS DISTRICT OFFICES

REASON FOR THIS TRANSMITTAL

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

SUBJECT: REPORTING AND INVESTIGATION REQUIREMENTS FOR CHILD ABUSE ALLEGATIONS REGARDING CHILDREN IN OUT-OF-HOME PLACEMENTS

The purpose of this letter is to clarify required actions when the subject of a report of suspected child abuse or neglect is a child in out-of-home placement including a child placed in the home of a relative or non-related extended family member (NREFM) under the jurisdiction of the county child welfare services agency. This clarification applies only to children under the care, custody or control of a county child welfare agency. This letter addresses the applicability of existing instructions on reporting, assessment, investigation, disposition, documentation and cross-reporting of such referrals. The California Department of Social Services (CDSS) will distribute future All County Letters (ACL) to provide clarification on issues related to out-of-home care abuse, e.g., children who are wards of the court.

AUTHORITY:

All incidents of suspected child abuse or neglect as defined by Penal Code 11165.1 et seq, of a child in an out-of-home placement must be reported as described in Penal Code Section 11166, and 11166.1 (Attachment I). Such incidents must be responded to and documented as described in the California Department of Social Services Manual of Policies and Procedures (MPP) Division 31-100 and ACL No. 03-61, issued December 2, 2003. The county's emergency response "Hot-Line" implemented as specified in Welfare and Institutions Code 16501(f) is the appropriate entity to receive and to record in the Child Welfare Services/Case Management System (CWS/CMS) all reports of suspected child abuse and neglect. In short, a report of suspected child abuse or neglect of a child in out-of-home care should be treated in the same manner and urgency as a report on any other child. Compliance with existing statutes and regulations is critical to ensure child safety and consistent reporting.

MANDATED REPORTERS:

Mandated reporters outside of child welfare services agency, (e.g., probation officers, CDSS licensing program analysts, CDSS adoption specialists, group home or foster family agency staff, etc.) are required to fulfill their mandated reporter responsibilities as specified in Penal Code Sections 11165.9 and 11166.

Mandated reporters who work within the child welfare services agency (e.g., placement social workers or county licensing workers) are similarly required to fulfill their mandated reporter responsibilities as specified by Penal Code Sections 11165.9 and 11166.

DISTINCTIONS IN CHILD WELFARE AND LICENSING ROLES:

When an allegation of suspected child abuse or neglect is made regarding a child in a licensed out-of-home care setting, the child welfare and the licensing agencies have distinct roles. The primary role of the child welfare agency for children in out-of-home care is to investigate suspected child abuse as necessary to protect and ensure the safety of children in placement. When necessary the child welfare agency has the authority and responsibility to remove a child, assess and recommend a placement, and coordinate an assessment or investigation with law enforcement and the licensing agency as defined by California Code of Regulations (CCR) Title 11 Section 930.52.

State Community Care Licensing (CCL) and county licensing offices are responsible for the investigation of any allegations of violations of licensing regulatory requirements in facilities licensed to provide out-of-home care to children. The types of allegations investigated include child abuse, violations of personal rights that do not rise to the level of child abuse, and violations of other licensing regulatory requirements such as physical plant or food service standards. CCL is not responsible for investigating relative/NREFM placements.

State CCL and county licensing offices are required to conduct these investigations regardless of whether or not another child welfare or law enforcement agency is investigating the same allegation. Dual investigations will occur in most licensed facility cases.

RESPONSE:

The local child welfare agency shall respond to all reports or referrals which allege child abuse or neglect by completing the Emergency Response Protocol and/or in-person investigation as specified in MPP Division 31-101 et seq. and outlined in Department of Justice (DOJ) regulations found at CCR Title 11, Article 3, Section 930. These regulations include, among others, the following requirements:

- The social worker shall record information as specified in MPP Division 31-105 et seq.

- The social worker must document the determination to not conduct an in-person investigation as specified in MPP Division 31-110 et seq.
- The social worker must conduct an immediate investigation if the situation indicates imminent danger to a child, or law enforcement states or the social worker determines that the child is at immediate risk of abuse, neglect or exploitation as specified in MPP Division 31-115 et seq.
- The social worker must conduct an in-person investigation within 10 calendar days after receipt of a referral when the emergency response protocol indicates an investigation is appropriate as specified in MPP Division 31-120 et seq.
- In the case of a child placed in a foster family agency, certified foster home or group home, where the county receiving the referral determines an immediate response is required, the county in which the child is placed is responsible for investigating the allegation. However, if it is determined that an in-person investigation within 10 calendar days is appropriate, the county responsible for the child's placement shall investigate the referral and complete the required reporting.
 - When a child resides outside the jurisdiction of the placing county, a referral requiring an investigation within 10 days must follow the response requirements of this letter unless there is a Memorandum of Understanding (MOU) between the placement county and the county of placement. A MOU developed for this purpose must ensure the requirements of Division 31 regulations are met and result in the referral and disposition being recorded in CWS/CMS.
- If in the course of an investigation, other children are suspected to have been abused or neglected, the social worker must make a referral to the child abuse hot line as a required mandated reporter.
- The DOJ Child Abuse Investigation Report form, SS8583, must be completed when an active investigation is conducted. The SS8583 requires verification when the victim(s), any known suspect(s) and witness(es) are contacted and a documented explanation of these contacts are not made.
 - For example, valid reasons for not contacting a suspect would include that the suspect was unknown, unavailable (such as group home staff placed on administrative leave), or not interviewed at the request of law enforcement.

It is not appropriate for a referral of abuse which requires an immediate response or an in-person investigation to be “evaluated out.” The child welfare agency is responsible for making an appropriate response to the referral and ensuring the disposition is recorded in the CWS/CMS. For allegations involving licensed caregivers, the responsible licensing agency conducts its own investigation of child abuse to ensure the licensee meets licensing standards. However, the licensing agency does not have access to CWS/CMS and cannot enter the results of investigations into this system. Additionally, the licensing agency is not an entity authorized to submit the SS8583 to DOJ.

A joint investigation of child abuse between the child welfare agency and CCL is the desired model. However, because the child welfare agency and CCL have two different statutory responsibilities and goals, investigations could result in two different dispositions. Furthermore, CCL investigations may extend beyond the timeframe that the child welfare agency has to investigate an allegation. After the child welfare agency makes a disposition, CCL’s continued investigation could result in discovery of additional facts that would require the child welfare agency to reopen the investigation process and possibly revise its disposition of the referral.

In the case of relative homes and NREFM’s, the child welfare agency is responsible for ensuring corrective action or follow up services if the child remains in the home.

CONFLICT OF INTEREST:

The county child welfare agencies are reminded of the applicability of the DOJ regulations found at CCR Title 11, Section 930.54(b) through (d) (Attachment II).

CROSS REPORTING:

It is important that the child welfare agency work closely with their partner agency (licensing or law enforcement) when cross reporting. A coordinated response is desirable to minimize trauma to the child.

The county must report child abuse as defined by Penal Code Section 11165.6, to law enforcement departments and the District Attorney’s Office as specified in Penal Code 11166(g).

The county must report every case that is substantiated or where findings are inconclusive (except allegations of general neglect) to the DOJ as specified in MPP Division 31-501 et seq.

The county must only notify the appropriate licensing agency of referrals received on behalf of a child in a certified or licensed home or facility, but not of children placed with an approved relative or NREFM.

DOCUMENTATION:

All allegations of abuse must result in the creation of a referral recorded on the CWS/CMS. ACL No. 03-61, issued December 2, 2003, contained instructions for documentation of child abuse and neglect, including additional system functionality for documenting referrals on children in foster care. The ACL addressed the following. Statements which are *italicized* were added to the original language of the ACL to provide further clarification:

“...Although the recent CWS/CMS release added a perpetrator type of SCP/Rec. Facility Staff to the ID page of the Allegation Notebook in CWS/CMS, this identifying type can only be chosen if one of the clients associated with this referral is selected. Changes to CWS/CMS are being planned to correct this problem. Pending completion of those changes, the required work around and current rules to improve the completeness of this data are as follows:

- All reports of abuse or neglect in out-of-home settings with a substitute care provider must have a referral created within CWS/CMS, even in those counties where CCL does facility licensing. *This includes reports on all of the following types of homes:*
 - *Foster family homes*
 - *Foster Family Agency certified homes*
 - *Group homes*
 - *Relative/NREFM homes*
 - *Small family homes*
- The date of these referrals should be the date that the agency became aware of the incident – not the date that the reported incident occurred.
- The referral must be created whether or not the specific identity of the perpetrator is known beyond the fact that it is an SCP or facility staff person.
- If the perpetrator is known – he/she should be created in the Client Notebook or associated with the referral if already available.
- If the perpetrator is unknown, the workaround is to create a client following a temporary naming convention. This naming convention is to use the facility type as the first name and the facility name as the last name. For example, if the abuse occurred in the relative/NREFM placement home of John Smith family, the created client would be Relative (first name) and Smith (last name). The choice for first name given the various facility types in CWS/CMS would be as follows: Court, FFA, Foster, Group, Guardian, Medical, Relative, Small Family and Tribe.

- If the perpetrator is unknown but subsequently identified, the correction should be made to CWS/CMS to reflect the identified person.
- *If the perpetrator is unavailable to be interviewed click “did not interview the perp”. A note should then be added in the social worker’s case notes stating the reason why the interview did not occur.*
- **After identifying the appropriate client, select the *radio button_SCP/Rec. Facility Staff person in the perpetrator type box on the ID page of the Allegation Notebook.***
- *When an allegation is reported but does not meet the definition of child abuse under Penal Code 11165.5, it should be recorded as:*
 - *Unfounded and closed, if there has been a face-to-face investigation.*
 - *Evaluated out and closed, if the determination was made without a face-to-face investigation.*

LICENSING VIOLATIONS:

Any reports of suspected child abuse that violate CCR Title 22 Division 6 licensing requirements, but *do not meet the threshold for child abuse or neglect as defined by Penal Code 11165.6*, must be cross reported to the licensing authority with jurisdiction over the facility. Similarly, approved relative or NREFM homes should be reported to the approval authority.

SUMMARY OF PROCESS:

- A report of suspected child abuse or neglect in an out-of-home care facility is made to the county Emergency Response Hot-Line and a referral is created in CWS/CMS.
- The social worker determines if an immediate response or in-person investigation is necessary, or if a referral to another agency is appropriate.
- All cross-reporting to appropriate agencies (e.g. law enforcement, DOJ, or licensing agency) are made in a timely manner.
- A disposition of the investigation is recorded in the CWS/CMS.
- A report of suspected child abuse is made on a dependent child who is already in the custody of the child welfare services agency. The child welfare service agency investigates the report as necessary to ensure the child’s safety and to determine a disposition. Any further investigation would be made by law

enforcement for purposes of criminal investigation or the licensing authority for purposes of taking any adverse action against the facility's license.

Any questions regarding this ACL should be directed to Karen Gunderson at (916) 657-3291.

Sincerely,

BARBARA EATON
Acting Deputy Director
Children and Family Services Division

Attachment

c: CWDA

ATTACHMENT I

CALIFORNIA CODES

PENAL CODE

SECTION 11166 – 11166.01

11166. (a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(c) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret. (2) Nothing in this subdivision shall be construed to

modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(e) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(g) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by

mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(h) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(i) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions **Code**, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(j) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions **Code** and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

11166.1. (a) When an agency receives a report pursuant to Section **11166** that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

(1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility. The agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of an agency specified in Section 11165.9 who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with Section **11166**. The agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the agency within 30 days of the request.

ATTACHMENT II

CALIFORNIA CODE OF REGULATIONS

§930.52. Child Welfare Agency.

(a) Protect the Child - The child welfare agency shall take the following measures to protect the child:

(1) Removal of the child - In cases of general neglect, the child welfare agency shall remove the child(ren) from the facility, immediately or as soon as possible, where the child(ren)'s condition or surroundings reasonable appear to jeopardize the child(ren)'s health and welfare. When a child is removed, notice of the removal shall be given to the child care provider in charge, prior to, or immediately after removal.

(2) Ensure continued Safety - In all cases of child abuse, the child welfare agency shall take the necessary measures to ensure the child(ren)'s safety while the child(ren) is/are in temporary custody.

(b) Placement Recommendation - The child welfare or placement agency that placed the child in the out-of-home care facility, shall make a placement recommendation. This agency shall be responsible for making an assessment and recommendation regarding the need for continued protective custody, the revocation of placement or alternative placement, and any other proper judicial relief which is warranted.

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