

HEALTH AND SOCIAL SERVICES CHILD ABUSE REPORTING

2008-2009 Grand Jury

REASON FOR INVESTIGATION

The 2008-2009 Solano County Grand Jury elected to review the policy and procedures of Child Protective Services in Solano County regarding citizens whose names have been placed on the Child Abuse Central Index.

GRAND JURY ACTIONS

- Interviewed Deputy Director of Child Welfare Services
- Interviewed Social Services Manager of Child Protective Services
- Obtained copies of investigative reports by Child Protective Services through Court order
- Reviewed previous Grand Jury reports concerning Child Protective Services
- Reviewed State of California Operating Procedural Guidelines for Investigating and Reporting Child Abuse Claims
- Reviewed California Penal Code, 2009 Edition

BACKGROUND AND SUMMARY

When Child Protective Services (CPS) receives a complaint of alleged child abuse, a Social Worker investigates the allegation. Following the investigation, the Social Worker classifies the category of abuse and determines whether or not placement on the Child Abuse Central Index (CACI) is warranted.

“Child” is defined by California Law as a person who has not attained the age of 18 (California Penal Code §11165).

Categories of Abuse:

- Sexual Abuse – Sexual assault, sexual contact, and sexual exploitation (California Penal Code §11165.1)
- Neglect – Negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare (California Penal Code §11165.2)
- Willful Harming or Injuring of a Child or the Endangering of the Person or Health of a Child –Willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering or causes their health to be endangered (California Penal Code §11165.3)
- Unlawful Corporal Punishment or Injury –Willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition (California Penal Code §11165.4)

CPS Procedure for Complaints Received by Reporting Parties

Solano County Health and Social Services Department CPS intake personnel report allegations received to Social Workers using a State of California Emergency Response Referral Information form. If the intake personnel determine that an in-person interview is appropriate, response time is assigned based on State and local criteria. This requires CPS to determine whether an immediate response is called for (an in-person contact with the family within 24 hours) or a 10-day response is appropriate (an in-person contact with the family within 10 calendar days of the referral).

After a referral is accepted for investigation and assigned to an Emergency Response Social Worker, the Social Worker begins investigating the referral and attempts to make contact with the reporting party, subject child, and family members. Social Workers gather information from interviews as well as from any other person who may have information concerning the allegation. According to the Social Services Manager of Child Protective Services, an interview of the alleged offender must be conducted in order for the person's name to be placed on CACI. However, in cases where the person refuses to be interviewed or makes themselves unavailable, lack of an interview may not obviate placement on CACI.

The Social Worker uses the State of California Structured Decision Making (SDM) assessment tool to assess the safety and risk to the child. The Social Worker can designate referrals as low-, moderate-, high- or very high-risk depending on the investigation and the result of the SDM assessments.

Using the information gathered, the Social Worker makes one of three determinations as defined in California Penal Code §11165.12:

- ***Unfounded:*** The report is determined by the investigator who conducted the investigation to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse. The person's name is not submitted to be listed on CACI.
- ***Inconclusive:*** A report is determined by the investigator, who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse and/or neglect have occurred. The person's name is placed on the CACI list and remains for 10 years (if no further incidents occur).
- ***Substantiated:*** The report is determined by the investigator who conducted the investigation to constitute child abuse and/or neglect. The person's name is permanently placed on the CACI list.

If the Social Worker deems the report of child mistreatment to be unfounded or finds that there is insufficient evidence to determine whether the mistreatment occurred, the case is closed. On the other hand, if the Social Worker makes a finding of Substantiated or Inconclusive, a determination is made as to whether the child should remain with the family, be removed to a safer environment or be placed in the custody of the Court. Ultimately, the Court makes the final decision as to the child's placement.

CPS practice is to notify offenders of their findings through first-class mail. This notification is sent out after the offender's name is submitted to the Department of Justice for placement on CACI.

California Penal Code Section 11170(a)-(f) defines Department of Justice responsibility to maintain reports of child abuse and severe neglect submitted pursuant to Section 11169. The section indicates that the index shall be continually updated by the Department and shall not contain any reports that are determined to be Unfounded.

Placement of a person's name on CACI may prevent that person from having employment where there may be contact with children. Unlike the database created by Megan's Law, which registers and tracks 63,000 named sex offenders, the CACI, which has over 800,000 names, is not actively managed by the State. It is not routinely purged of erroneous or unsupported entries. Individuals whose names appear on the list often appeal the placement. The appeal may or may not result in removal from the list, depending on the circumstances of the case.

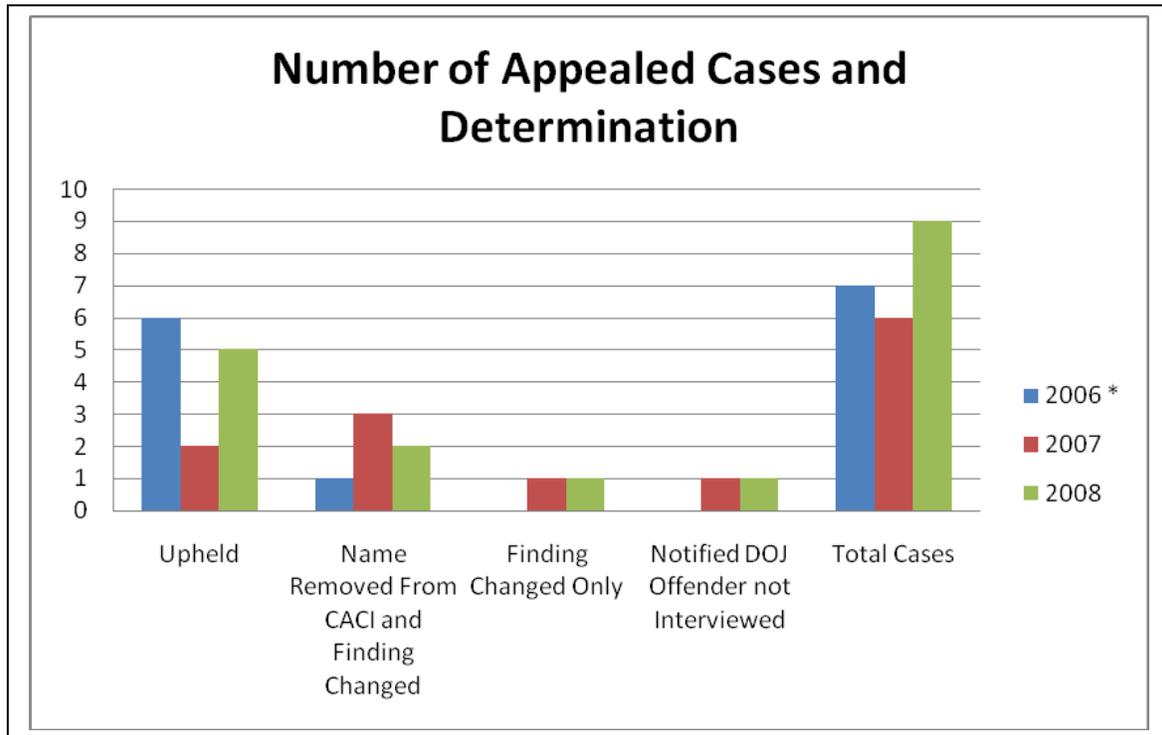
Cases under appeal are reviewed at each level by CPS managers and supervisors who may have been part of the original review process that resulted in the person's name being placed on CACI.

Prior Solano County Grand Jury reports on CPS found that:

- There was an absence of manager signatures on reports documenting managerial review, decisions, and/or approval
- When Social Workers prepared their reports based on their observations in the field, the content of the reports were sometimes altered by the supervisors and/or managers; consequently, Social Workers were given the option to refuse to sign altered reports or clarify in court testimony that they did not personally write portions of what might be viewed as evidence
- There was confusion on the part of CPS staff regarding procedures and policies
- There was oversensitivity to negative feedback
- There was a lack of mutual accountability and teamwork at all levels
- CPS has continued to demonstrate an inability to self-correct, although there have been internal and external attempts to correct these deficiencies; its organizational culture is subverting the achievement of the CPS mission

CPS does not have investigative manuals designed to teach and direct Social Workers in their duties and responsibilities in Solano County. The materials used by CPS comprise many binders containing broad guidelines provided by the State of California and the Northern California Training Academy. They are designed to assist employees and are not meant to be specific to Solano County. The manuals are voluminous, sometimes vague, and confusing. A reader would have to spend hours in researching a single subject.

The Deputy Director provided statistical information on offenders who challenged their cases during the timeframe July 2006 to December 2008. The information showed 10% to 50% of the challenged cases had the findings reduced and/or their names removed from CACI.



* July – December 2006

FINDINGS AND RECOMMENDATIONS

Finding 1 – The procedure of placing an alleged offender’s name on the Child Abuse Central Index prior to offender notification by mail may interfere with the offender’s due process. Once the name is placed on the Child Abuse Central Index, it becomes difficult and costly to remove upon appeal.

Recommendation 1 – Prior to Child Protective Services forwarding a name to the Department of Justice for placement on the Child Abuse Central Index, Child Protective Services should notify the alleged offender. In most cases, a person who is deemed to be a danger to children as a result of an Inconclusive or Substantiated finding should be given the opportunity to respond to Child Protective Services prior to their name being released to the Department of Justice.

Finding 2 – Child Protective Services investigative reports of abuse may be modified, altered, or changed by management and supervisors. Findings, conclusions, or other important facts may be edited without documentation or attribution of the changes. This practice has been noted by this and previous Grand Juries.

Recommendation 2 – Child Protective Services reports that are modified by managers and/or supervisors should be signed, dated and notated to identify the source of the changes and identify what has been altered, modified or edited. This documentation should take place whether the changes were orally transmitted to the Social Worker or written.

Finding 3 – Child Protective Services notifies offenders of their status and findings through first-class mail. Under certain circumstances, this may result in notification not being received and the offender not knowing that their name has been placed on the Child Abuse Central Index.

Recommendation 3 – Child Protective Services should notify the alleged offender the same way that Courts handle important notifications, through Certified Mail with Return Receipt. This will document receipt of notification, which is important because placement on the Child Abuse Central Index may have the consequences of impacting the life, income, family and employment of the individual.

Finding 4 – There are indications that alleged offenders and other parties to an investigation may not have been interviewed by Child Protective Services staff before the offender’s name has been placed on the Child Abuse Central Index. There appears to be a lack of realistic policy that covers situations where offenders are not available for interview. The lack of an interview may lead to an incomplete investigation.

Recommendation 4 – Child Protective Services should develop a policy that addresses situations where parties to the allegation may not have been interviewed. When all parties are not interviewed, there should be collateral, objective evidence that supports the allegation of abuse in order to reach a conclusion that benefits the goals of Child Protective Services.

Finding 5 – There is a fine line between Unfounded and Inconclusive determinations. An Inconclusive determination automatically places an alleged offender’s name on the Child Abuse Central Index without conclusive evidence and a legal framework to ensure due process. This may give the appearance of “guilty until proven innocent,” contrary to legal tradition.

Recommendation 5 – Since the definition of “inconclusive” in the California Penal Code is broad enough to allow different interpretations, Solano County Child Protective Services should recommend that the category of Inconclusive be dropped as a determination of placement on the list, or modified to the point where there is an objective understanding of the justification for its utilization.

Finding 6 – Cases under appeal are reviewed by Child Protective Services managers and supervisors who have been involved in reviews of the original case. This can lead to accusations of a lack of objectivity in the appeal process.

Recommendation 6 – The Director of Solano County Health and Social Services should employ a retired annuitant on an ad hoc basis to act as an independent and unbiased reviewer of grieved cases to ensure objectivity of the process. Ideally, this person would have investigative experience, knowledge of juvenile law and the ability to consult with the Juvenile Court.

Finding 7 – The Director of Child Protective Services has compiled statistical data on appeals of investigative cases beginning July 2006. Analysis of this data provides an important measure of the quality of investigations completed by Social Workers and identifies areas of needed improvement.

Recommendation 7 – Child Protective Services should continue collecting this data and act upon the findings.

COMMENTS

Placement on the Child Abuse Central Index may result in serious consequences to an offender including the ability to earn a living in their selected field. An application for employment requiring a background check may reveal the applicant's name on Child Abuse Central Index, and will prohibit placement in a field where there may be association with children.

Those placed on Child Abuse Central Index who believe that due process was not afforded may file a grievance. Guidelines for appeal have been set forth under the *Gomez v. Saenz* lawsuit, which addresses the rights of individuals whose names are or will be listed on the Child Abuse Central Index, and requires that Child Protective Services explain the right to a review and provide a copy of the grievance procedure regulations. These forms are available from the Department of Health and Social Services.

RESPONDING AND AFFECTED AGENCIES

Solano County Director Health and Social Services

Solano County Deputy Director of Child Protective Services

COURTESY COPIES

Solano County Board of Supervisors

Solano County Juvenile Court