

## **Child Abuse**

### **315.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidelines for the investigation of suspected child abuse. This policy also addresses when California Department of State Hospitals (DSH) employees are required to notify the county Child Protective Services (CPS) of suspected child abuse.

#### **315.1.1 DEFINITIONS**

Definitions related to this policy include:

**Child** - Unless otherwise specified by a cited statute, a child is any person under the age of 18 years.

**Child abuse** - Any offense or attempted offense involving violence or neglect with a child victim when committed by a person responsible for the child's care or any other act that would mandate notification to a social service agency or law enforcement (Pen. Code § 11165.9; Pen. Code § 11166).

### **315.2 POLICY**

DSH will investigate all reported incidents of alleged criminal child abuse, notify the appropriate allied agency, and ensure CPS is notified as required by law.

### **315.3 MANDATORY NOTIFICATION**

The child protection agency shall be notified when (Pen. Code § 11166):

- (a) There is a known or suspected instance of child abuse or neglect reported, which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or
- (b) A person responsible for the child's welfare fails to adequately protect the child from abuse when the person knew or reasonably should have known that the child was in danger of abuse.

The District Attorney's office shall be notified via the appropriate allied agency in all instances of known or suspected child abuse or neglect reported to DSH. Reports only involving neglect by a person, who has the care or custody of a child, to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred should not be reported to the District Attorney (Pen. Code § 11166).

When the abuse or neglect occurs at a licensed facility or is alleged to have resulted from the actions of a person who is required to have a state license (e.g., foster homes, group homes, day care), notification shall also be made, via the appropriate allied agency, to the California Department of Social Services or other applicable licensing authority (Pen. Code 11166.1; Pen. Code 11166.2).

For purposes of notification, the abuse or neglect includes physical injury or death inflicted by other than accidental means upon a child by another person; sexual abuse (Pen. Code § 11165.1); neglect (Pen. Code § 11165.2); the willful harming or injuring of a child or the endangering of the person or health of a child (Pen. Code § 11165.3); and unlawful corporal punishment or injury (Pen. Code § 11165.4). Child abuse or neglect does not include a mutual affray between minors, nor does it include an injury caused by the reasonable and necessary force used by a peace officer acting within the course and scope of his/her employment as a peace officer.

### **315.3.1 NOTIFICATION PROCEDURE**

Notification should occur as follows (Pen. Code § 11166):

- (a) Notification shall be made immediately, or as soon as practicable, by telephone, fax or electronic transmission.
- (b) A written follow-up report should be forwarded within 36 hours of receiving the information concerning the incident.

#### **315.4 QUALIFIED INVESTIGATORS**

Qualified investigators should be available for child abuse investigations. These investigators should:

- (a) Conduct interviews in child appropriate interview facilities.
- (b) Be familiar with forensic interview techniques specific to child abuse investigations.
- (c) Present all cases of alleged child abuse to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and school administrators as needed.
- (e) Provide referrals to therapy services, victim advocates, guardians and support for the child and family as appropriate.
- (f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welf. & Inst. Code § 18961.7).

#### **315.5 INVESTIGATIONS AND REPORTING**

In all reported or suspected cases of child abuse, a report will be written. Officers shall write a report even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of child abuse should address, as applicable:

- (a) The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected child abuse victim was contacted.
  - (b) The exigent circumstances that existed if officers interviewed the child victim without the presence of a parent or guardian.
  - (c) Any relevant statements the child may have made and to whom he/she made the statements.
  - (d) If a child was taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
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- (c) Documentation of any visible injuries or any injuries identified by the child. This should include photographs of such injuries, if practicable.
- (d) Whether the child victim was transported for medical treatment or a medical examination.
- (e) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other children who may reside in the residence.
- (f) Identification of any prior related reports or allegations of child abuse, including other jurisdictions, as reasonably known.
- (g) Previous addresses of the victim and suspect.
- (h) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.

All cases of the unexplained death of a child should be investigated as thoroughly as if it had been a case of suspected child abuse (e.g., a sudden or unexplained death of an infant).

#### **315.5.1 EXTRA JURISDICTIONAL REPORTS**

If a report of known or suspected child abuse or neglect that is alleged to have occurred outside this jurisdiction is received, DSH employees shall ensure that the caller is immediately transferred to the agency with proper jurisdiction for the investigation of the case. If the caller cannot be successfully transferred to the appropriate agency, a report shall be taken and immediately referred by telephone, fax or electronic transfer to the agency with proper jurisdiction (Pen. Code 11165.9).

#### **315.6 PROTECTIVE CUSTODY**

Before taking any child into protective custody, the officer should make reasonable attempts to contact CPS. Generally, removal of a child from his/her family, guardian or other responsible adult should be left to the child welfare authorities when they are present or have become involved in an investigation.

Generally, employees of DSH should remove a child from his/her parent or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the child. Prior to taking a child into protective custody, the officer should take reasonable steps to deliver the child to another qualified parent or legal guardian, unless it reasonably appears that the release would endanger the child or result in abduction. If this is not a reasonable option, the officer shall ensure that the child is delivered to CPS. Whenever practicable, the officer should inform the Watch Commander of the circumstances prior to taking a child into protective custody. If prior notification is not practicable, officers should contact a supervisor promptly after taking a child into protective custody.

Children may only be removed from a parent or guardian in the following situations when a court order cannot reasonably be obtained in a timely manner (Welf. & Inst. Code § 305):

- (a) The officer reasonably believes the child is a person described in Welfare and Institutions Code § 300, or a commercially exploited child under Penal Code section 647 and Penal Code section 653.22, and further has good cause to believe that any of the following conditions exist:
    - 1. The child has an immediate need for medical care.
    - 2. The child is in immediate danger of physical or sexual abuse.
    - 3. The physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In the case of a child left unattended, the officer shall first attempt to locate and determine if a responsible parent or guardian is available and capable of assuming custody before taking the child into protective custody.
  - (b) The officer reasonably believes the child requires protective custody under the provisions of Penal Code § 279.6, in one of the following circumstances:
    - 1. It reasonably appears to the officer that a person is likely to conceal the child, flee the jurisdiction with the child or, by flight or concealment, evade the authority of the court.
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1. There is no lawful custodian available to take custody of the child.
  2. There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.
  3. The child is an abducted child.
- (c) The child is in the company of, or under the control of, a person arrested for Penal Code § 278 (Detainment or concealment of child from legal custodian) or Penal Code section 278.5 (Deprivation of custody of a child or right to visitation) (Pen. Code § 279.6).

A child taken into protective custody shall be delivered to CPS unless otherwise directed by court order.

#### **315.6.1 CALIFORNIA SAFELY SURRENDERED BABY LAW**

An individual having lawful custody of an infant less than 72 hours old is not guilty of abandonment if the individual voluntarily surrenders physical custody of the infant to personnel on-duty at a safe- surrender site, such as a hospital or fire department (Pen. Code § 271.5). The law requires the surrender site to notify CPS.

#### **315.6.2 NEWBORNS TESTING POSITIVE FOR DRUGS**

Under certain circumstances, officers can be prohibited from taking a newborn who is the subject of a proposed adoption into protective custody, even when the newborn has tested positive for illegal drugs or the birth mother tested positive for illegal drugs. Officers shall instead follow the provisions of Welfare and Institutions Code section 305.6 to ensure that the newborn is placed with the adoptive parents when it is appropriate.

## **315.7 INTERVIEWS**

### **315.7.1 PRELIMINARY INTERVIEWS**

Absent extenuating circumstances or impracticality, officers should record the preliminary interview with suspected child abuse victims. Officers should avoid multiple interviews with a child victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating officers should defer interviews until a person who is specially trained in such interviews is available. Generally, child victims should not be interviewed in the home or location where the alleged abuse occurred.

### **315.7.2 DETAINING SUSPECTED CHILD ABUSE VICTIMS FOR AN INTERVIEW**

An officer should not detain a child involuntarily who is suspected of being a victim of child abuse solely for the purpose of an interview or physical exam without the consent of a parent or guardian unless one of the following applies:

- (a) Exigent circumstances exist, such as:
  - 1. A reasonable belief that medical issues of the child need to be addressed immediately.
  - 2. A reasonable belief that the child is or will be in danger of harm if the interview or physical exam is not immediately completed.
  - 3. The alleged offender is the custodial parent or guardian and there is reason to believe the child may be in continued danger.
- (b) A court order or warrant has been issued.

### **315.7.3 INTERVIEWS AT A SCHOOL**

Any student at school who is a suspected victim of child abuse shall be afforded the option of being interviewed in private or selecting any qualified available adult member of the school staff to be present. The purpose of the staff member's presence is to provide comfort and support. The staff member shall not participate in the interview. The selection of a staff member should be such that it does not burden the school with costs or hardship (Pen. Code § 11174.3).

### **315.8 MEDICAL EXAMINATIONS**

If the child has been the victim of abuse that requires a medical examination, the investigating officer should obtain consent for such examination from the appropriate parent, guardian or agency having legal custody of the child. The officer should also arrange for the child's transportation to the appropriate medical facility.

In cases where the alleged offender is the custodial parent or guardian and is refusing consent for the medical examination, officers should notify the Watch Commander before proceeding. If exigent circumstances do not exist or if state law does not provide for officers to take the child for a medical examination, the Watch Commander should consider obtaining a court order for such an examination.

### **315.9 DRUG-ENDANGERED CHILDREN**

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of children exposed to the manufacturing, trafficking or use of narcotics.



### **315.9.1 SUPERVISOR**

**RESPONSIBILITIES** The Investigations supervisor should:

- (a) Work with professionals from the appropriate agencies, including CPS, other law enforcement agencies, medical service providers and local prosecutors to develop community specific procedures for responding to situations where there are children endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
- (b) Activate any available interagency response when an officer notifies the Investigations supervisor that the officer has responded to a drug lab or other narcotics crime scene where a child is present or where evidence indicates that a child lives there.

### **315.9.2 OFFICER RESPONSIBILITIES**

Officers responding to a drug lab or other narcotics crime scene where a child is present or where there is evidence that a child lives should:

- (a) Document the environmental, medical, social and other conditions of the child using photography as appropriate and the checklist or form developed for this purpose.
- (b) Notify the Investigations supervisor so an interagency response can begin.

### **315.10 STATE MANDATES AND OTHER RELEVANT LAWS**

California requires or permits the following:

#### **315.10.1 RELEASE OF REPORTS**

Information related to incidents of child abuse or suspected child abuse shall be confidential and may only be disclosed pursuant to state law and the Records Maintenance and Release Policy (Pen. Code 841.5; Pen. Code § 11167.5).

#### **315.10.2 CHILD DEATH REVIEW TEAM**

DSH should cooperate with any interagency child death review team investigation. Written and oral information relating to the death of a child that would otherwise be subject to release restrictions may be disclosed to the child death review team upon written request and approval of a supervisor (Pen. Code § 11174.32).

### **315.11 TRAINING**

DSH should provide training on best practices in child abuse investigations to employees tasked with investigating these cases. The training should include:

- (a) Participating in multidisciplinary investigations, as appropriate.
- (b) Conducting forensic interviews.
- (c) Availability of therapy services for children and families.
- (d) Availability of specialized forensic medical exams.
- (e) Cultural competence (including interpretive services) related to child abuse investigations.
- (f) Availability of victim advocate or guardian ad litem support.