

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE OF PROPOSED AMENDMENTS TO DEPARTMENT OF JUSTICE REGULATIONS PERTAINING TO CHILD ABUSE REPORTS RECORDKEEPING

NOTICE IS HEREBY GIVEN that the Department of Justice (DOJ), pursuant to the authority vested in California Penal Code (PC) section 11170(a) in order to administer the requirements of the Child Abuse and Neglect Reporting Act (CANRA) set forth in PC section 11164 et seq, is proposing to amend its regulations pertaining to Child Abuse Reports Recordkeeping in Title 11, Division 1, Chapter 9, Article 1 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Laws and Regulations

Existing law (PC section 11170(a)) requires the DOJ to maintain an index of all reports of child abuse and severe neglect submitted pursuant to PC section 11169 and to continually update the index. The DOJ currently maintains the Child Abuse Central Index (CACI) to carry out provisions of the statute. Existing law also provides that the DOJ may adopt rules governing recordkeeping and reporting. In 1988 the DOJ adopted Regulations Pertaining to Child Abuse Reports Recordkeeping, which were added to the California Code of Regulations, as Sections 900 through 911, Title 11, Division 1, Chapter 9, Article 1. In 2002, the DOJ amended the regulations to implement changes in the law, and in 2005 the DOJ again amended the regulations because of a statutory change in definitions and to clarify definitions and procedures for reporting and recordkeeping.

Proposed Amendments to Regulations

The DOJ seeks to amend regulations sections 900 through 911 to provide clearer guidance to local agencies required to make reports to the CACI under PC section 11169 and to streamline the reporting process so that more complete information is reported to the CACI. The reporting requirements in the proposed amended regulations are more consistent with the legislative intent of CANRA in that the CACI simply serves as a reference tool to locate investigatory reports regarding prior allegations of child abuse and severe neglect. By reducing the number of items that need to be reported to the DOJ, the revised regulations will ensure that reports of suspected abuse or neglect are more promptly processed and that the DOJ will have fewer instances where reports are not filed in the CACI because the local reporting agency failed to include information currently required by the regulations. In sum, the revised regulations will speed up entry of information in the CACI, impose less reporting burdens on reporting agencies, result in fewer reports being deemed or returned as incomplete, and will still fulfill the intent of the Legislature that the CACI be a valuable tool for locating instance of prior suspected abuse or severe neglect. Additionally, in the case of *Michael S. Whyte v. California Department of Justice*, the Kern County Superior Court issued a judgment holding that section 908 violated the Information Practices Act of 1977, Civil Code section 1798 *et seq*, and therefore was unlawful. The proposed amended regulations implements the judgment issued by the court in the *Whyte* case.

Lastly, a settlement was reached in the case *Gomez v. Saenz et al.* whereby an individual listed on the CACI by local social welfare agencies may challenge his or her listing on the CACI. The revised regulations permit reporting local social welfare agencies to submit a revised determination whether a person should still be listed on the CACI following the challenge.

The following items outline the proposed amendments.

1. **The title of the Regulations is amended from “Department of Justice Regulations for Child Abuse Reports Recordkeeping” to “Department of Justice Regulations for Child Abuse or Severe Neglect Report Indexing.”**
2. **The title of Article 1 is amended from “Report of Child Abuse” to “Administration of the Child Abuse Central Index.”**
3. **Section 900 (Scope) is reworded to rename the statewide file from ACAS to CACI; and to specify the statutory authority and requirements relating to the implementation of the CACI, the submission of child abuse information to the DOJ, and the administration of the CACI.**
4. **Section 901 is amended as follows:**
 - This section is renamed from “Definitions” to “Form Required for Submitting Report of Suspected Child Abuse or Severe Neglect.”
 - Existing subsections (a) through (t) defining terms found in the regulations are deleted.
 - Subsection (a) is added rewording the agency requirement to report instances of known or suspected child abuse or severe neglect (previously described in section 903(a) of the Regulations) and the phrase “required to report instances of” replaces “required to report investigation summaries of.”
 - Subsection (b) is added and introduces the reporting form (previously described in section 903(b) of the Regulations).
 - **The reporting form is amended as follows:**
 - The form itself is amended to a single page, No Carbon Required (NCR) document from a 5 page NCR document and the main section headings have been centered.
 - The form number is amended from “SS 8583” to “BCIA 8583.”
 - The form is renamed from “Child Abuse Summary Report” to “Child Abuse or Severe Neglect Indexing Form.”

- The instructions in the top block are amended from “To be Completed by Investigating Child Protective Agency Pursuant to Penal Code Section 11169” to “Entire Form To Be Completed by Submitting Child Protective Agency Pursuant to Penal Code section 11169.” The statement “Shaded areas must be completed” is removed.
- Boxes are added to the top block for “Report” and “Amended Report.” The parenthetical statement “Attach copy of original 8583 and complete Sections A, C and other applicable fields” is added to the Amended Report box.
- **Section A is amended as follows:**
 - This section is renamed from “Investigating Agency” to “Submitting Agency.”
 - A.1 is amended from “Investigating Agency” to “Submitting Agency.”
 - A.5 is amended to remove “Title” of investigating party.
 - A.6 is amended from “Date Report Completed” to “Date of Report” and moved to amended Section B.
 - A. 7 “Agency Cross-Reported To” is deleted.
 - A.8 “Person Cross-Reported To” is deleted.
 - A.9 “Date Cross Reported” is deleted.
 - A.10 is amended from “Action Taken” to “Determination Made” and moved to amended Section B.2.
 - A.10(1) narrative description of Substantiated is amended from “Abuse more likely than not to have occurred” to “Penal Code section 11165.12(b).”
 - A.10(2) narrative description of Inconclusive is amended from “Insufficient evidence of abuse, not unfounded” to “Penal Code section 11165.12(c).”
 - A.10.A is amended from “Supplemental Information” to “Amended Report Information” and moved to amended Section C.

- A. 11 is entirely deleted, including “Active Investigation conducted”, “Victim contacted”, “Suspect contacted”, “No Suspects”, “Witness contacted” and “No witnesses.”
- A.12 “Comments” is moved to amended Section C.
- **Section B is amended as follows:**
 - B.1 “Date of Incident” is moved to amended Section B.3.
 - B.2 “Time of Incident” is deleted.
 - B.3 “Location of Incident” is deleted.
 - B.4 “Name of Party Reporting Incident” is deleted.
 - B.5 “Employer” is deleted.
 - B.6 “Telephone” is deleted.
 - B.7 “Type of Abuse” is entirely deleted from this area and moved to amended Section B.4. “Type of Abuse” categories are amended as follows: “Physical” to “Physical Injury”, “Mental” to “Mental/Emotional Suffering” and “Sexual” to “Sexual Abuse, Assault, Exploitation.” “General Neglect” is removed. “Willful Harming/Endangerment” and “Unlawful Corporal Punishment or Injury” are added.
 - B.8 “If Abuse Occurred in Out-Of-Home Care, Check Type” is deleted.
- Existing Section C is renamed from “Involved Parties” to “Parties” and the whole section is moved to new Section D. See descriptions of new Section D below for additional changes to the “Parties” information.
- Section C is renamed from “Involved Parties” to “Amended Report Information” and contains the following fields:
 - “Original Agency Report No/Case Name”, “Date of Incident” and “Type of Abuse.”

- Types of amended reports, including: “Changed to Inconclusive”, “Changed to Substantiated”, “Now Unfounded”, “Added Additional Information”, “Corrected Report Information” and “Underlying Investigative File No Longer Available.”
- Section D is newly added and includes information that was in previous Section C “Involved Parties”. Fields are amended as follows:
 - In the “Victims” section, “Address”, “Present Location of Victim” and “Telephone Number” are deleted. Also, the spaces allotted for victim information is amended from three to two victims.
 - In the “Suspects” section, “Other” is deleted from “Relationship to Victim.”
 - In the “Other” section, “Parent/Stepparent” and “Sibling” fields are deleted and space added to include information for two additional “Other” involved parties.
- The noted authority is amended to reflect the above changes.

5. Section 902 is amended as follows:

- This section is renamed from “Purpose of ACAS” to “Responsibilities of Agencies Submitting Reporting Form.”
- Existing sentences one through three which described the purpose of CACI are reworded and moved to amended section 900 (Scope).
- Existing sentences four and five which described submitting agency responsibility to obtain and review the underlying investigative report and make their own assessment are reworded and moved to section 903.
- Subsections (a), (b), (c) and (d) are added.
 - Subsection (a) describes the responsibility to submit completed forms, information that has been reworded from sections 903(a)(2) and 904.
 - Subsection (b) is new language and describes the requirements for submitting amended reports to the DOJ.

- Subsection (c) is new language and describes the requirements for record retention.
- Subsection (d) includes information from section 908(a)(1)(A) regarding availability of the underlying reports and adds the requirement that the submitting agency shall immediately notify the DOJ if investigatory files are no longer retained. Removes the phrase “or if the submitting agency does not respond to the written notification within thirty days” which conforms to the DOJ decision not to confirm the existence of investigatory files.
- The noted authority is amended to reflect the above changes.

6. Section 903 is amended as follows:

- This section is renamed from “Standard Reporting Form for Reports of Child Abuse Maintained in ACAS” to “Entities Authorized to Access CACI Information May Not Make Determinations Based Solely on the CACI Listing.”
- Existing section 903(a) which described the reporting form is reworded and moved to amended section 901(a). The description of when the form is used is amended from “to report investigative summaries of suspected incidents of child abuse and severe neglect...” to “to report instances of known or suspected child abuse or severe neglect...”
- Existing section 903(a)(1) which described the requirement to use a current reporting form is deleted.
- Existing section 903(a)(2) which described the mandatory fields on the reporting form is reworded and moved to amended section 902(a).
- Existing sections 903(a)(2) (A) - (H) which described required fields on the reporting form are deleted.
- Existing section 903(b) which introduced the reporting form is reworded and moved to amended section 901(b).
- Added a paragraph describing the responsibilities of authorized entities regarding making decisions based on CACI information. This information was part of original section 902.
- The noted authority is amended to reflect the above changes.

7. Section 904 is amended as follows:

- This section is renamed from “DOJ Review and Verification of Submitted Summary Reports” to “DOJ Notification When a Submitting Agency Provides Names Identified in Existing CACI Entries.”
- The existing first paragraph, first sentence which described the DOJ’s process of reviewing submissions to determine that they meet the definitions of the regulations is deleted. The remainder of this paragraph is reworded and moved to amended section 902 (a).
- Subsections (a), (b) and (c) are added.
 - Subsection (a) relates to the DOJ notifying submitting agencies of possible matches upon receiving a report of child abuse or severe neglect (as previously described in existing section 905, 905(a) and 905(b). Additionally, new wording adds “determination made” to the information the DOJ returns in an agency response and adds the process of providing notification to prosecutors who request notification of subsequent CACI entries.
 - Subsection (b) relates to notifying prior submitting agencies of a subsequent match requiring retention of their investigative report for at least 10 years (as previously described in existing section 905(c).
 - Subsection (c) describes the DOJ’s notification process and is reworded from section 905(d).
- The noted authority is amended to reflect the above changes.

8. Section 905 is amended as follows:

- This section is renamed from “DOJ Procedures for Notification When ACAS Shows Information Relevant to a Newly Received Report” to “Releasing CACI Information in Response to Inquiries From Authorized Entities.”
- The existing first paragraph and subsections (a) and (b) which described the DOJ processes for notification are reworded and moved to amended section 904(a).
- Existing section 905(c) which described the reporting agency’s record retention requirements is reworded and moved to amended section 904(b).
- Existing section 905(d) which described the DOJ process for notification is reworded and moved to amended section 904(c).

- Existing section 905(e) which defined the DOJ processing time is deleted.
- Subsections (a) and (b) are added.
 - Subsection (a) which describes what information the DOJ will provide is reworded from section 907(a) with the following amendments: deletes the last sentence that defines the DOJ processing time; amends “an agency making an active investigation” to “an agency conducting an investigation.”
 - Subsection (b) which describes applicant background processing is reworded from section 907(b).
- The noted authority is amended to reflect the above changes.

9. Section 906 is amended as follows:

- This section is renamed from “DOJ Procedures for Processing Reports Submitted by Agencies with Different Investigative Determinations” to “Disclosure of CACI Information to Members of the Public.”
- The existing section, which describes the DOJ's process for handling separate reports from different agencies on the same incident, is deleted.
- Subsection (a) is added and contains information from existing section 908(a)(2) which describes the self inquiry process; removes the language regarding the DOJ's process of confirming the availability of the underlying report; and includes providing information regarding all record disseminations (both investigatory and non-criminal). Additionally, the automatic release of all related documents under the Information Practices Act is added.
- Subsection (b) is added as new language and describes the DOJ's process for responding to specified victim's requests to remove their information from CACI.
- Subsection (c) is added as new language and describes a person's rights pursuant to the Information Practices Act.
- The noted authority is amended to reflect the above changes.

10. Section 907 “ACAS Information Released in Response to Inquiries” is deleted, but information within this Section is amended as follows:

- The existing first paragraph, which discusses confidentiality, is reworded and moved to amended section 905.
- The existing first two sentences in section 907(a) which describe what information the DOJ will provide are reworded and moved to amended section 905(a). The last sentence in 907(a) which defines the DOJ response time is deleted.
- Existing section 907(b) which describes the application process is reworded and moved to amended section 905(b).
- Existing section 907(c) which describes TrustLine Registry processes is deleted.
- The noted authority is amended to reflect the above changes.

11. Section 908 “Procedure for Confirmation of ACAS Information for Purposes of Peace Officer Employment, TrustLine Registry, Child Care Licensing or Employment, Adoption or Placement of Children, and for When a Private Citizen Inquires About His/Her Own Record” is deleted, but information within this Section is amended as follows:

- Existing sections 908(a) and (a)(1) which described the DOJ confirmation process are deleted. Under the revised regulations, the original reporting agency is obligated to inform the DOJ if the investigatory file that resulted in the CACI listing under CANRA is no longer available or that an individual should be removed from the CACI.
- Existing section 908(a)(1)(A) which described agency notification when files are not available is reworded and moved to amended section 902(d). This amendment makes the reporting agency responsible for immediately notifying the DOJ if their investigatory files are no longer available.
- Existing section 908(a)(2), first sentence, described the DOJ confirmation process and is deleted. This amendment is consistent with other changes that remove the DOJ from the responsibility of confirming availability of investigatory files before responding to inquiries. As noted, under the revised regulations, the original reporting agency is obligated to inform the DOJ if the investigatory file that resulted in the CACI listing under CANRA is no longer available or that an individual should be removed from the CACI.

- Existing section 908(a)(2) second half of the paragraph beginning with “DOJ staff will notify” described the DOJ’s process for notifying citizens of CACI searches and is reworded and moved to amended section 906(a)(1). This section is amended to include notification of disseminations for both investigative and non-criminal investigation purposes rather than disseminations for non-criminal investigations only.
 - Existing sections 908(a)(2)(A) - (a)(2)(B)(4) are deleted. These subsections deal with confirmation of underlying investigative reports and deleting them is consistent with other changes that remove the DOJ from the responsibility of confirming availability of investigatory files before responding to inquiries.
 - Existing section 908(b) describes the form letter used to request confirmation of information and is deleted. This change is consistent with the DOJ’s decision not to confirm the availability of investigatory files.
12. **Existing section 909** “Notification in Response to Inquiries to ACAS Pertaining to Peace Officer Employment, TrustLine Registry, Child Care Licensing and Employment, Adoptions and Placement of Children” described the applicant process and is reworded and moved to amended section 905(b). The amended language deletes the DOJ’s process to notify individuals of the release of possible match information to an applicant agency and the process to confirm availability of the investigative file. The amended language also adds live scan as one method to submit requests.
13. **Existing section 910** “Audit Trail of Information Released from ACAS” is deleted.
14. **Existing section 911** “Processing of Record Sealing Orders” is deleted.

PUBLIC HEARING DATES, TIME AND PLACE:

No public hearing has been scheduled for the proposed regulatory action; however any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to the Administrative Procedures Act, Government Code section 11346.8.

WRITTEN COMMENT PERIOD:

Any interested persons, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below. The written comment period closes on February 2, 2009, at 5 p.m. Only written comments received by that time shall be considered.

CONTACT PERSON:

Any requests for or questions regarding the regulations package should be directed to:

Rebecca Mills
California Department of Justice
Division of California Justice Information Services
Child Protection Program
P.O. Box 903387
Sacramento, CA 94203-3870

Telephone: (916) 227-3347

OR

Tina Lewis
California Department of Justice
Division of California Justice Information Services
Child Protection Program
P.O. Box 903387
Sacramento, CA 94203-3870

Telephone: (916) 227-5050

IMPACT STATEMENTS:

Cost Impact on Local Agencies and School Districts: The proposed amendments to existing regulations will not create a local mandate, will not have a significant impact on local agencies and school districts, which must be reimbursable in accordance with California Government Code, Part 7, commencing with section 17500 of Division 4. Local Child Protective Agencies are already required by PC section 11169(a) and 11169(b) to follow the procedures covered by the proposed amendments.

Non-Discretionary Costs or Savings: The proposed amendments to existing regulations will not create any non-discretionary costs and will not generate any savings.

Cost or Savings to State Agencies and Federal Funding to the State: No additional costs or savings will be incurred by the Child Protection Program because these proposed regulations make only technical, non-substantive or clarifying changes to current regulations.

The proposed regulations will impact the State Department of Social Services, which maintains a computerized version of the standard child abuse reporting form. No other state agencies will be impacted and there will not be any impact on any federal funding programs to the state.

Business Impact: The proposed amendments to existing regulations will have no significant, statewide adverse economic impact directly affecting businesses in California, including the ability of California businesses to compete with businesses in other states.

Impact on Small Businesses, Private Persons, and Housing Costs: The proposed amendments to existing regulations will have no significant economic impact on small businesses and private persons because these regulations affect only those individuals listed in the California Child Abuse Index as a result of meeting reporting requirements identified in PC section 11169, and will have no impact on housing costs. The DOJ is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Job/Business Creation, Elimination, or Expansion: The adoption of the proposed amendments to existing regulations will not create or eliminate jobs in the State of California nor will it result in the elimination of existing businesses or create or expand businesses in the state.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code section 11346.5, subdivision (a)(13), the DOJ must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The DOJ invites interested persons to present statements or arguments with respect to alternatives to the proposed amendment to existing regulations during the written comment period.

AUTHORITY:

PC section 11170(a) specifies that the DOJ may adopt rules governing child abuse recordkeeping and reporting.

REFERENCE:

The regulatory action implements, interprets, and makes specific the Child Abuse and Neglect Reporting Act set forth in Penal Code sections 11164 et seq.

AVAILABILITY OF STATEMENT OF REASONS, PROPOSED REGULATIONS AND

OTHER INFORMATION:

The DOJ has prepared a statement of reasons for the proposed amendments to existing regulations and a listing of the exact regulations being proposed.

Copies of the exact language of the statement of reasons and of the text of the proposed amendments to existing regulations and any other information may be obtained from the DOJ contact person shown in this notice. Copies of the exact language of the statement of reasons and of the text of the proposed amendments to existing regulations may also be obtained through the Attorney General web site at www.ag.ca.gov/childabuse/index.htm.

With the exception of any non-substantive technical or grammatical changes, the full text of any amended proposal will be available for 15 days prior to its adoption to all persons who submit written comments during the public comment period, and all persons who request notification.

AVAILABILITY OF CHANGED OR AMENDED TEXT:

After the DOJ analyzes all timely and relevant comments received during the comment period, the DOJ will either adopt the amendments to the existing regulations as described in this notice, or make modifications based on the comments. If the DOJ makes modifications which are sufficiently related to the original text of the proposed amendments to existing regulations, the amended text, with the changes clearly indicated, will be made available to the public for at least 15 days before the DOJ adopts the revised amendments to the existing regulations. The DOJ will accept written comments on the amended regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS:

Once the Final Statement of Reasons has been prepared, it will be made available through the contact person shown in this notice.