

# **INITIAL STATEMENT OF REASONS FOR PROPOSED AMENDMENT TO CHILD ABUSE REPORTS RECORDKEEPING REGULATIONS**

## **INITIAL STATEMENT OF REASONS**

### **SPECIFIC PURPOSE OF THE REGULATION AMENDMENT**

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 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 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 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 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.

### **RATIONALE OF PROPOSED AMENDMENTS**

Since 1965, the DOJ has administered the Child Abuse Central Index (CACI). The DOJ's responsibilities in administering the CACI are set forth in the CANRA, and specifically defined in Penal Code (PC) section 11170, the DOJ will:

- maintain an index [PC section 11170(a)(1)];
- continually update the index which is only to include child abuse reports determined not to be unfounded [PC section 11170(a)(1)];
- act only as a repository [PC section 11170 (a)(2)]; and
- be responsible for ensuring the index accurately reflects the report received from the submitting agency [PC section 11170 (a)(2)].

As defined in PC sections 11169 and 11170, the submitting agency will:

- forward to the DOJ a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded [PC section 11169 (a)];
- not forward a report to the DOJ unless the submitting agency has conducted an active investigation and determined that the report is not unfounded [PC section 11169 (a)];
- notify in writing the known or suspected child abuser that he/she has been reported to the index when the report is forwarded to the DOJ [PC section 11169 (b)];
- ensure the accuracy, completeness and retention of reports submitted to the index [PC section 11170 (a)(2)];
- notify the DOJ of changes in findings of reports previously submitted [PC section 11169 (a)]; and
- retain the investigative report for the same period of time that the information is required to be maintained on the index [PC section 11169 (c)].

Recent legal advice from the Attorney General's Office indicates the Child Abuse Reports Recordkeeping Regulations need to be amended to ensure the DOJ is acting within the scope of its legislative authority with respect to administering the CACI. Based on existing law, the DOJ is not statutorily required to perform some of the functions currently being performed under the regulations in order to maintain the CACI in the manner envisioned by the Legislature. Given that, the below amendments are an effort to refine the scope of the DOJ's CACI functions to ensure they are consistent with statute requirements. The regulatory changes proposed will speed up entry of information into 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 instances of prior suspected abuse or severe neglect.

#### **Proposed amendment 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."**

#### Specific purpose and rationale:

The title was amended to more closely reflect the content, and intent, of the amended regulations, and makes it clear that the DOJ is maintaining an "Index." "Severe Neglect" is added to the title to align it with the language in PC section 11170(a)(1) which states in part "The Department of Justice shall maintain an index of all reports of child abuse and severe neglect ...". This is a non-substantive change intended to provide the reader with more specific information. There is no policy or procedural change based on this amendment.

### **Proposed amendment 2:**

**The title of Article 1 is amended from “Report of Child Abuse” to “Administration of the Child Abuse Central Index.”**

#### Specific purpose and rationale:

This title was deemed more appropriate in addressing the overall subject matter and purpose of these Regulations. The new title changes the emphasis from “reporting information to the CACI” to “administration of the CACI”. This is a non-substantive change intended to provide the reader with more specific information. There is no policy or procedural change based on this amendment.

### **Proposed amendment 3:**

**Section 900 (Scope) is reworded to rename the statewide file from the Automated Child Abuse System (ACAS) to the 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.**

#### Specific purpose and rationale:

This section was reworded to provide the reader with the corrected name of the statewide index (CACI) as well as a general understanding of the statutorily required roles and responsibilities of those agencies involved in investigating allegations of child abuse, submitting reports to the CACI, and disclosing CACI information. There is no policy or procedural change based on this amendment.

### **Proposed amendment 4:**

**Section 901 is renamed from “Definitions” to “Form Required for Submitting Report of Suspected Child Abuse or Severe Neglect.” All information in the existing Section [(a) - (t)] is deleted. The Section is amended to rename, describe and provide the revised form required to submit suspected child abuse or severe neglect reports to the DOJ. The form number is also changed from SS 8583 to BCIA 8583.**

#### Specific purpose and rationale:

The definitions were removed from the regulations as they were deemed either no longer applicable in the amended version, already existing in the CANRA statutes, or deemed non-essential. There is no policy or procedural change based on this amendment

The submission form was renamed from the “Child Abuse Summary Report” to the “Child Abuse or Severe Neglect Indexing Form” to ensure severe neglect cases are reported to the DOJ and to

more clearly differentiate this form from the mandated reporters form (Suspected Child Abuse Report - SS 8572). The renumbering of the form from SS 8583 to BCIA 8583 more clearly identifies the area within the DOJ that has responsibility for the form. The form itself was revised to more closely follow the statutory intent. Specifically, existing law mandates the submitting agency to ensure cases submitted to the DOJ have been investigated and to ensure accuracy and completeness of the case submitted. The DOJ will accept forms indicating that the submitting agencies are adhering to their mandates when forwarding reports of child abuse and neglect for entry into the CACI.

#### **Proposed amendment 5:**

**Section 902 is renamed from “Purpose of ACAS” to “Responsibilities of Agencies Submitting Reporting Form.” Some information in this Section has been reworded and moved to the appropriate location in the amended Regulations. New language is added to further describe the submitting agency’s responsibilities regarding the submission of amended information, and adds the requirement that submitting agency’s immediately notify the DOJ if the investigatory files are no longer retained.**

#### Specific purpose and rationale:

The title was amended to more closely reflect the content of the amended Section. The proposed amendment rewords and moves information to the appropriate area in the revised regulations with no change to policy or procedure.

The new language that requires submitting agencies to advise DOJ if the investigatory files are no longer retained is required by statute and reflects the intent of the regulation changes which is for the DOJ to more closely align its functions and responsibilities within the scope prescribed by the statutes. Submitting agencies are statutorily required to ensure the accuracy, completeness and retention of reports submitted to the index and to notify the DOJ of changes in findings of reports previously submitted.

#### **Proposed amendment 6:**

**Section 903 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.” The description of mandatory fields on the reporting form was deleted. The remainder of this Section has been reworded and moved to the appropriate area in the amended Regulations.**

#### Specific purpose and rationale:

The title was amended to more closely reflect the content of the amended section. The proposed amendment rewords and moves information to the appropriate area in the revised Regulations with no change to policy or procedure.

The deletion of the items specified in section 903(a)(2)(A) - (H) more closely align the DOJ with its specifically defined responsibilities under CANRA. The revised submission form now holds only information that is necessary for entry and searching of the CACI. There are no longer certain fields that are mandatory for retention. All fields must be completed.

**Proposed amendment 7:**

**Section 904 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 proposed amendment removes DOJ’s process of reviewing submissions to determine that they meet the definitions of the regulations. The remainder of this Section has been reworded and moved to the appropriate area in the amended Regulations.**

Specific purpose and rationale:

The title was amended to more closely reflect the content of the amended section. The proposed amendment to reword and move information to the appropriate area in the revised Regulations does not change policy or procedure.

The deletion of the sentence which relates to the DOJ’s process of reviewing submissions to determine that they meet the definitions of the regulations is consistent with the DOJ’s effort to ensure that it acts within the scope of its statutory authority. The DOJ is required to ensure the information received is accurately entered into the CACI. There is no statutory authority expressing that the DOJ may validate the quality or quantity of the information received from a submitting agency.

**Proposed amendment 8:**

**Section 905 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 proposed amendment deletes the specified processing time for the DOJ. It also amends “active investigation” to “conducting an investigation”. The remainder of the proposed amendments in this Section have been reworded and moved to the appropriate area in the amended Regulations.**

Specific purpose and rationale:

The title was amended to more closely reflect the content of the amended section. The proposed amendment to reword and move information to the appropriate area in the revised Regulations does not change policy or procedure.

The deletion of the DOJ processing time constraints removes a requirement that is not specified in statute.

The rewording of “active investigation” to “conducting an investigation” reflects the intent to place the responsibility on the submitting agency to forward a report to the DOJ only after it has conducted an active investigation and determined that the report is not unfounded. This conforms to the specific requirements of PC section 11169, subdivision (a).

**Proposed amendment 9:**

**Section 906 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.” This amendment removes language regarding processing separate reports from different agencies, adds language regarding processing victim’s requests and adds language regarding a person’s rights regarding inspecting, reviewing, disputing, amending and correcting information contained in CACI.**

Specific purpose and rationale:

The title was amended to more closely reflect the content of the amended section.

The proposed amendment removes DOJ’s process for receiving separate reports from agencies regarding the same incident from these Regulations; however, the DOJ continues this practice as part of it’s procedure and does not need to be specifically reflected in Regulations. The new reworded language, previously in section 908 (a)(2), removes the process of confirming the availability of the investigative report prior to responding on a citizen inquiry. Pursuant to existing law, it is the submitting agencies responsibility to ensure the accuracy, completeness and retention of reports submitted to the index; notify the DOJ of changes in reports previously submitted; and to retain the investigative report for the same period of time that the information is required to be maintained on the index. This change reflects the overall intent of the revised Regulations to ensure the DOJ is not exceeding its authority in administering the CACI. Additionally, the requirement that a person be provided his or her CACI records when requested is required under the judgment issued by the court in the *Michael S. Whyte v. California Department of Justice* case.

**Proposed amendment 10:**

**Section 907 “ACAS Information Released in Response to Inquiries” is deleted, but a majority of the information within this Section is reworded and moved to the appropriate area in the amended Regulations. DOJ’s processing time is deleted. Information about TrustLine is deleted.**

Specific purpose and rationale:

A majority of this section is reworded and moved to the appropriate area in the revised

Regulations and does not change policy or procedure. The deletion of the DOJ processing time constraints removes a requirement not specified in statute.

TrustLine processing is removed because the DOJ is no longer responsible for TrustLine.

**Proposed amendment 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. Information in this Section is reworded and moved to the appropriate area in the amended Regulations. Information concerning DOJ’s confirmation process is deleted. DOJ’s notification to citizen’s inquiries is expanded to include disseminations for both investigative and applicant purposes.**

Specific purpose and rationale:

The deletion of the DOJ confirmation process reflects the overall intent of the Regulation changes to align the DOJ with its statutory requirements and ensure the DOJ is acting within the scope of its authority. Submitting agencies are responsible for ensuring the accuracy, completeness and retention of reports submitted to the index; to notify the DOJ of changes in reports previously submitted; and to retain the investigative report for the same period of time that the information is required to be maintained on the index.

The additional information the DOJ provides to citizen's inquiries aligns the process with the Information Practices Act of 1977, Civil Code section 1798 et seq.

The remainder of this section has been reworded and moved to the appropriate area in the amended Regulations and has no impact on policy or procedures.

**Proposed amendment 12:**

**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” is reworded and moved to amended section 905(b). The DOJ’s process of notifying individuals when it releases possible match information to an applicant agency and the process of confirming availability of the investigative file are deleted.**

Specific purpose and rationale:

The DOJ’s process of notifying individuals whose names are released as a possible match to an inquiring agency is removed. Pursuant to existing statute [PC sections 11170 (b)(7) and 11170

(c)], the DOJ is not specifically authorized to perform this function. Additionally, the process of confirming availability of investigative files associated with CACI entries was removed. Pursuant to PC section 11169 (a) and 11170 (a)(2), submitting agencies are responsible for ensuring the accuracy and completeness of reports submitted to the CACI and for notifying the DOJ of report changes which would require removal. Given these statutory requirements, the DOJ will no longer confirm report availability.

The remainder of this section is reworded and moved to the appropriate area in the amended Regulations and has no impact on policy or procedures.

**Proposed amendment 13:**

**Section 910 “Audit Trail of Information Released from ACAS” is deleted.**

Specific purpose and rationale:

The DOJ is required by statute to maintain an index and to continually update the index. The audit trail is an integral part of the index and does not need to be specifically reflected in Regulations. This amendment has no impact on policy or procedures.

**Proposed amendment 14:**

**Section 911 “Processing of Record Sealing Orders” is deleted.**

Specific purpose and rationale:

Court ordered sealings fall outside the purview of the regulatory process. However, the DOJ will continue to abide by sealing orders. This amendment has no impact on policy or procedures.