

Case No. S267429

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re D.P.,

A Person Coming Under the Juvenile Law.

**LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND
FAMILY SERVICES**

Petitioner and Respondent,

v.

T.P.,

Objector and Appellant.

After an Unpublished Decision by the Court of Appeal
Second Appellate District, Division Five, Case No. B301135
Los Angeles Superior Court, Case No. 19CCJP00973B

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
and
[PROPOSED] BRIEF OF AMICUS CURIAE IN SUPPORT OF NO
PARTY**

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to Rules 8.208(e) and 8.488 of the California Rules of Court, Amicus certifies that it knows of no other person or entity that has a financial or other interest in this case.

Dated: November 1, 2021

By: /s/ Tate R. Lounsbery
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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF NO PARTY**

Pursuant to California Rules of Court, Rule 8.200(c), proposed amicus curiae Lounsbery Law Office, PC (LLO) respectfully requests leave to file the accompanying [Proposed] Amicus Curiae Brief in Support of No Party.

Lounsbery Law Office, PC is a San Diego-based law firm that represents individuals throughout the state of California in their effort to have their names removed from the Child Abuse Central Index (CACI). LLO provides the public a wealth of free information about the CACI through its website at cacilawyer.com. LLO seeks to ensure county child welfare agencies statewide faithfully execute the laws set forth in the Child Abuse and Neglect Reporting Act (CANRA) throughout the CACI grievance process. LLO also seeks to ensure county child welfare agencies respect the federal and state constitutional rights of all aggrieved parties throughout the CACI grievance proceedings. LLO has helped clients get off the CACI in at least 27 California counties by participating in CACI grievance proceedings and CACI-related petitions for writ of mandamus proceedings. At one time, LLO was involved in approximately 30% of all CACI grievance hearings in California. LLO likely has more experience in CACI grievance proceedings than any other California law firm.

LLO's principal, the undersigned, has spent countless hours researching the CANRA and its history, including legislative history from as far back as 1945, 1980, 1987, 2003, and 2011. LLO's principal was also involved in successful lobbying efforts related to two CANRA-related bills: Assembly Bill 1450 in 2020 and Assembly Bill AB 506 in 2021. LLO's principal has also been a regular provider of free training for child abuse mandated reporters among school districts, mental health professionals, and

other mandated reporters, which training focused on the definitions of child abuse and neglect as set forth in the CANRA.

LLO seeks to ensure those in dependency proceedings have the same opportunity to dispute a CACI listing as those not going through dependency proceedings. LLO presents this brief to provide analysis regarding the inapplicability of dependency proceedings to CACI grievances. LLO believes this brief will assist the Court in considering this matter in the context of historical failures on the part of all county child welfare agencies to honor aggrieved parties' constitutional rights by affording them opportunity to dispute their CACI listings and the current prejudice that parents continue to suffer due to misapplication of the law on the part of every county child welfare agency in the state.

This application is timely under Rule 8.200(c)(1) of the California Rules of Court.

In accordance with California Rules of Court, Rule 8.200(c)(3), no party or counsel for any party in the pending appeal authored this brief in whole or in part, and no party or counsel for any party in the pending appeal made a monetary contribution intended to fund the brief's preparation or submission. No person or entity other than counsel for the proposed amicus made a monetary contribution intended to fund the preparation or submission of this brief.

Pursuant to Rules 8.360(f) and 8.200(c) of the California Rules of Court, LLO respectfully requests that it be granted leave to file the accompanying amicus curiae brief.

Dated: November 1, 2021

Lounsbery Law Office, PC

By: /s/ Tate R. Lounsbery
Tate R. Lounsbery

Attorney for Amicus Curiae

BRIEF OF AMICUS CURIAE IN SUPPORT OF NO PARTY

INTRODUCTION

This brief seeks to answer only the second question presented: Is an appeal of a juvenile court's jurisdictional finding moot when a parent asserts that he or she may be barred from challenging a current or future placement on the Child Abuse Central Index as a result of the finding?

Currently, county child welfare services (CWS) agencies routinely, yet unlawfully (as explained herein), deny CACI grievance hearings to those who are currently placed on the Child Abuse Central Index and also subject to a true finding in dependency court. Thus, as a current practical matter, because county CWS agencies incorrectly interpret and apply the law, the answer to the second question presented is, “No.”

However, when parents bring up the CACI issues in an appeal of dependency proceedings, CWS agencies assert in their appellate briefs that the dependency proceedings are unrelated to CACI proceedings.¹

It is this duplicity that brings this matter before this Court.

Going forward, if this Court adopts the legal analysis herein, and if county CWS agencies correctly apply the law in that they do not bar a challenge to an existing CACI placement on account of a finding in dependency court and they do not newly place someone on the CACI on account of a finding in dependency court, the answer to the question should

¹ See the following unpublished appellate opinions: *Fresno County Department of Social Services v. Savanna H. (In re J.V.)*, 2020 Cal.App.Unpub. LEXIS 1514; *San Bernardino County Children & Family Services v. W.Y. (In re D.Y.)*, 2020 Cal.App.Unpub. LEXIS 6073; *Kern County Department of Human Services v. Josiah M. (In re Josiah M.)*, 2015 Cal.App.Unpub. LEXIS 6064; *Santa Clara County Department of Family & Children's Services v. C.P. (In re M.V.)*, 2015 Cal.App.Unpub. LEXIS 7553; *Los Angeles County Department of Children & Family Services v. Alex M. (In re V.O.)*, 2013 Cal.App.Unpub. LEXIS 3826.

be, “Yes.” Therefore, as to the second question presented before this Court, the decision of the appellate court should be affirmed.

ARGUMENT

I. LEGISLATIVE HISTORY DEMONSTRATES THE LEGISLATIVE INTENT TO BASE A CACI LISTING ON CHILD ABUSE AND NEGLECT AS DEFINED BY SUBSTANTIVE CRIMINAL LAW, NOT DEPENDENCY LAW

The CACI is a statewide list of known or suspected child abusers authorized by the CANRA, in Penal Code (PC) § 11164 et seq. The CANRA requires the California Department of Justice (DOJ) to maintain the CACI. Originally intended for use by law enforcement agencies, today only county CWS agencies may refer an accused’s name to the DOJ for listing on the CACI. Pursuant to PC § 11169(b), as of January 1, 2012, police departments and sheriff’s departments are prohibited from referring individuals to the DOJ for listing in the CACI. This change was possibly a reaction to *Humphries v. County of Los Angeles*, 554 F.3d 1170 (9th Cir. 2008).

The CANRA dictates the conditions on which a CWS agency must refer for listing in the CACI the name of an individual whom the agency has found to have committed child abuse or neglect. Those conditions are specified in the CANRA by way of various definitions of “child abuse and neglect.” If a CWS agency determines abuse or neglect occurred, as defined in the CANRA, the agency is mandated to refer the accused’s name to the DOJ for listing in the CACI. See Penal Code § 11169(a).

The CANRA offers CWS agencies no discretion: they are required to have someone listed in the CACI when the CANRA’s conditions are

met, and they are prohibited from having someone listed in the CACI when the CANRA's conditions are not met.

A. The CANRA Borrows, and Has Always Borrowed, its Definition of Child Abuse and Neglect from Substantive Criminal Law Found in the Penal Code

Over the decades, the CANRA has been amended on multiple occasions. When defining the meaning of “child abuse and neglect” within the CANRA, the Legislature has repeatedly, and explicitly, referenced other Penal Code sections (outside the CANRA) that define child abuse, namely PC § 273a and PC § 273d (when it comes to physical abuse and mental abuse) and many other code sections (when it comes to sexual abuse). See a true and correct copy of a portion of the record incorporated herein and attached as **Exhibit 1** (particularly page 10 of the exhibit, regarding what was previously Penal Code § 11165(g).)

The purpose of the CACI is and always has been to create an up-to-date and accurate database, accessible by agencies statewide, of those who have (or are suspected of having) committed crimes of child abuse or neglect. See *Planned Parenthood Affiliates v. Van de Kamp*, 181 Cal.App.3d 245, 267 (1st Dist. 1986) [The reporting laws “contemplate criminal acts”].

The second sentence of PC § 11169(a) only authorizes a CACI listing for a report of substantiated child abuse as defined in PC § 11165.12.

Penal Code § 11165.12(b) only allows Child Welfare Services (CWS) agencies to substantiate acts as child abuse or neglect “as defined in Section 11165.6.”

Pursuant to PC § 11165.6, “the term ‘child abuse or neglect’” “[a]s used in this article” is given a specific definition. The term is defined

exclusively by specific code sections within the CANRA that further define the various categories of child abuse or neglect. The various categories of child abuse or neglect that can subject a person to placement in the CACI are: physical abuse, sexual abuse, mental abuse² (although CWS agencies commonly refer to it as “emotional abuse”), and severe neglect.

CANRA’s definition of physical child abuse is laid out in two code sections: PC §§ 11165.3 and 11165.4. See *Gonzalez, supra*, at 85. Both of those definitions mirror definitions of child abuse found outside the CANRA, but within the Penal Code, that provide the basis for prosecution in criminal cases. The definition in PC § 11165.3 is nearly identical to the definition of child abuse found in PC § 273a. (California Criminal Jury Instruction [CALCRIM] No. 823 refers to this crime as “Child Abuse.”) The definition in PC § 11165.4 is practically identical to the definition of child abuse found in PC § 273d. (CALCRIM No. 822 refers to this crime as “Inflicting Physical Punishment on Child.”)

CANRA’s definition of mental abuse (as set forth in PC § 11165.3) again mirrors PC § 273a.

CANRA’s definition of sexual abuse includes many different crimes referenced by Penal Code sections outside the CANRA.

² Perhaps owing to their work in dependency cases under Welfare & Institutions Code § 300(c), which uses the word “emotional,” in CACI proceedings CWS agencies commonly refer to mental abuse as emotional abuse. Doing so introduces confusion into the CACI proceeding because while “unjustifiable mental suffering” is grounds for a CACI listing under PC § 11165.3, “serious emotional damage,” referenced in PC § 11166.05, is not grounds for a CACI listing. Hence, to ensure clarity in CACI proceedings, adoption of the moniker “mental” is preferable to “emotional.”

B. The Sudden Advent of CACI Grievance Hearings Via Settlement and State Regulation Resulted in Confusion That This Court Should Resolve

The cases of *Burt v. County of Orange*, 120 Cal.App.4th 273 (4th Dist. 2004); *Saraswati v. County of San Diego*, 202 Cal.App.4th 917 (4th Dist. 2011); and *Humphries v. County of Los Angeles*, 554 F.3d 1170 (2008) all demonstrate that county CWS agencies have, for decades, violated people's constitutional rights by depriving them opportunities to challenge CACI listings.

In response to a lawsuit settlement commonly referred to as the *Gomez v. Saenz* case³, the California Department of Social Services Child Welfare Services (DSS) promulgated regulations requiring county CWS agencies to begin offering those whose names are placed in the CACI an opportunity to dispute their listing via a so-called grievance hearing. Those regulations became effective in 2008 and are set forth in Department of Social Services Manual of Policies and Procedures (MPP) § 31-021.

The MPP failed (and fails) to provide CWS agencies any guidance on how they are to determine whether the definitions of child abuse or neglect in the CANRA are met.

Given that 1) CWS agencies are accustomed to working in dependency court, applying the Welfare & Institutions Code (WIC), and 2) CWS agencies have little experience enforcing substantive criminal law as set forth in the Penal Code, there arose great confusion among the CWS agencies as to what substantive law applies in CACI grievance hearings. The use of the word "confusion" here is not to say that there was great

³ The case is *Gomez v. Lockyer*, case number BC284896, in Los Angeles County. For this reason, many CWS agencies refer to CACI grievance hearings as *Gomez* hearings.

disagreement among the many county CWS agencies, but instead to say that many of the county agencies were wrong together in applying the WIC definitions of child abuse instead of the Penal Code definitions of child abuse.

Given that the advent of CACI grievance hearings is relatively recent, there is limited appellate guidance on the substantive and procedural legal issues they entail.

Gonzalez v. Santa Clara County Department of Social Services, 223 Cal.App.4th 72 (6th Dist. 2014) offered some hope at clarifying what law should be applied in CACI grievance proceedings. *Gonzalez* reiterated that the reporting laws’ “placement in the code governing criminal culpability and prosecution tends to suggest that it was addressed to conduct that was *criminal in character*.” *Id.* at 87. *Gonzalez* relied in part on legislative intent in coming to this conclusion: “In an uncoded statement of intention, the Legislature declared...‘it is the intent of the Legislature to require the reporting of *child abuse which is of a serious nature*.’ (Stats. 1980, Ch. 1071, § 5, p. 3425.)” (italics added). Despite the fact that CACI grievance hearings are not criminal proceedings, but informal administrative hearings that are civil in nature, *Gonzalez* clarifies that “well settled principles limiting culpability for criminal child abuse should be consulted in applying *parallel provisions* of CANRA.” *Id.* at 89 (italics added). *Gonzalez* certainly did not apply the WIC definitions of child abuse.

One principle limiting culpability for criminal child abuse requires a prosecuting agency to prove a crime by proving each element of the offense. The elements of child abuse crimes are set forth in the California Criminal Jury Instructions (CALCRIM).

For instance, given that the wording of PC § 273a(b) is nearly identical to PC § 11165.3 in the CANRA, it makes sense that these two code sections are among the “parallel provisions” that *Gonzalez* referenced. That being the case, one would expect that, just as a violation of PC § 273a(b) is proved in criminal court using the elements set forth in CALCRIM No.823, likewise a violation of PC § 11165.3 should also be proved in a CACI grievance by reference to CALCRIM No. 823.

Penal Code § 11169(d) is the legislative act authorizing county CWS agencies to conduct CACI grievance hearings. It is notable especially for how little it contains by way of mandate or guidance for CWS agencies conducting CACI grievance hearings.

This case presents an opportunity for this Court to provide a desperately needed⁴ confirmation that only the Penal Code definitions of child abuse and neglect apply in CACI grievance proceedings.

II. THE CANRA CONFIRMS A JURISDICTIONAL FINDING IN DEPENDENCY COURT HAS NO BEARING ON A CACI LISTING NOR A CACI GRIEVANCE

A. CACI Proceedings Rely Exclusively on the CANRA Definitions of Child Abuse or Neglect

Penal Code § 11169(e) deprives an aggrieved party the right to a CACI grievance hearing “when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court.” The phrase “child abuse or neglect” in PC § 11169(e) has a specific definition in the CANRA, laid out in Penal Code §

⁴ Social workers and deputy county counsel in various counties still regularly cite WIC definitions of child abuse or neglect as grounds for a CACI listing.

11165.6. One must read PC § 11169(e) in light of the definition set forth in PC § 11165.6 and the restriction set forth in PC § 11169(a) (which permits a CACI listing for severe neglect, but not general neglect).

Excluded from the definition of “child abuse or neglect” within the meaning of the CANRA is any reference to any code section within the WIC.

The CANRA hints at no relationship between a CACI listing and substantive juvenile dependency law.

B. CACI and Dependency Proceedings Have Different Purposes

Not only do CACI and dependency proceedings derive from different statutes and different definitions of child abuse, but they also have distinct purposes.

CACI proceedings are intended to safeguard fundamental liberty rights⁵ that have been impinged by local executive agencies. These rights are held by all individuals, regardless of age or parental status. Even minors who have no children are listed in the CACI as substantiated child abusers. The only issue litigated in a CACI grievance proceeding is whether the accused committed child abuse or severe neglect (as defined in the CANRA).

In contrast, dependency proceedings relate to minors vis-à-vis their parents or guardians. Fundamentally, a dependency court's jurisdictional findings relate to the minor, not to the parent. See *In re Malinda S.*, 51

⁵ CACI listings implicate familial privacy rights under the federal Constitution and informational privacy rights under the California Constitution. See *Saraswati v. County of San Diego*, 202 Cal.App.4th 917, 928 (4th Dist. 2011) (“We conclude that the familial and informational privacy rights identified in *Burt* are sufficient to establish that there is substantial impact on fundamental vested rights when...a parent is listed on the CACI.”).

Cal.3d 368, 384 (1990) (“Dependency proceedings are civil in nature, designed not to prosecute a parent, but to protect the child.”) (citation and quotations omitted). The dependency court takes jurisdiction over the minor, not the parent. *In re D.M.*, 242 Cal.App.4th 634, 638 (2d Dist. 2015) (“Dependency jurisdiction attaches to a child, not to his or her parent.”).

This Court has held that WIC § 300(b)(1) “authorizes dependency jurisdiction without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child.” *In re R.T.*, 3 Cal.5th 622, 624 (2017). The court explained that in *any* dependency case, “Although the harm or risk of harm to the child must generally be the result of an act, omission or inability of one of the parents or guardians, the central focus of dependency jurisdiction is clearly on the child rather than the parent.” *Id.* at 626 (citations and quotations omitted).

For these reasons, a jurisdictional hearing or trial in a dependency case does not satisfy a CWS agency’s obligation to provide a hearing for the purpose of disputing a CACI listing, nor provide the parent or guardian listed in the CACI with an opportunity to challenge allegations under the Penal Code because they are outside the scope of the jurisdictional contest.

C. CACI-Related Legal Issues Are Not Litigated in Dependency Court

Even where one incident forms the basis of both a CACI listing and dependency proceeding, the legal issues litigated in the two proceedings are dissimilar.

Any evidentiary hearing has two purposes: 1) to determine the facts, and 2) determine how the law applies to the facts.

Even where a dependency court makes factual findings to support a true finding in a jurisdiction hearing, the dependency court still makes no

determination as to how those facts are applied or aligned to the child abuse definitions in the CANRA. The forum designated by the Legislature where that issue is to be litigated is the CACI grievance proceeding.

**D. Pending Dependency Cases Should Not Prevent a CACI
Grievance**

Penal Code § 11169(e) deprives an aggrieved party the right to a CACI grievance hearing “when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court.” Given that the definition of the phrase “child abuse or neglect” in the CANRA has no relevance in a dependency jurisdictional proceeding and is not litigated in such a hearing, the allegation that resulted in the referral to the CACI is never “pending” before the dependency court. Therefore, CWS agencies are wrong to deny aggrieved parties CACI grievance hearings under this statute. This Court should clarify this point to guide CWS agencies, all of which routinely deny CACI grievances due to pending dependency cases.

What types of court cases would qualify under PC § 11169(e)? Any case in which the aggrieved party is fighting an allegation of child abuse or severe neglect as defined in the CANRA. It make sense that a qualifying pending case would include a criminal case involving an alleged violation of either PC § 273a or PC § 273d when it relates to the same factual allegations and same alleged victim as the CACI referral.

**III. MOOTNESS ALSO APPLIES AS TO FUTURE CACI
PLACEMENTS**

The arguments for mootness as it relates to current CACI placements also apply to future CACI placements, but there is an additional reason that applies to future CACI placements.

No statute authorizes a CWS agency to choose to place a person’s name on the CACI on the basis of a dependency court finding. A CACI

listing is only authorized when the agency concludes an investigation with a finding of substantiated. PC §§ 11169(a) and 11165.12(b). The hearing in which an individual challenges a CACI listing must be “before the agency that requested his or her inclusion in the CACI.” PC § 11169(d). No statute allows a CWS agency to defer to the dependency court for the CACI-listing-decision. While this may be debated as a matter of policy preference, the statute allows no alternative reading. This does make sense, though, because, as mentioned throughout, the issues decided by a dependency judge in a jurisdictional hearing are wholly separate from the issues relevant to a CACI listing.

CONCLUSION

For all the foregoing reasons, LLO respectfully requests that this Court affirm the decision and hold that an appeal of a juvenile court's jurisdictional finding moot when a parent asserts that he or she may be barred from challenging a current or future placement on the Child Abuse Central Index as a result of the finding.

Dated: November 1, 2021

Lounsbery Law Office, PC

By: /s/ Tate R. Lounsbery
Tate R. Lounsbery

Attorney for Amicus Curiae

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520(c) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this Proposed Amicus Curiae Brief, counsel certifies that the text of this brief (including footnotes) was produced using 13-point type and contains 3,065 words. This includes footnotes but excludes the tables required under Rule 8.204(a)(1), the cover information required under Rule 8.204(b)(10), the Certificate of Interested Entities or Persons required under Rule 8.208, the Application to File Amicus Curiae Brief required under Rule 8.200(c)(1-3), this certificate, and the signature blocks. See Cal. Rule of Court, Rule 8.204(c)(3).

Lounsbery Law Office, PC

Dated: November 1, 2021

By: /s/ Tate R. Lounsbery
Tate R. Lounsbery

*Attorney for Amicus
Curiae*

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 270 E. Douglas Avenue, El Cajon, California 92020. I am employed in the office of a member of the bar of this court at whose direction the service was made. On November 1, 2021, I served the attached document (APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF And [PROPOSED] BRIEF OF AMICI CURIAE IN SUPPORT OF NO PARTY) by electronically transmitting a true copy via this Court's TrueFiling system to the recipients listed on the below service list.

Also on this date, I placed true copies in a sealed envelope, with the correct postage, and deposited them in the United States Postal Service, to each of the following persons indicated below at the following addresses:

Hon. Craig Barnes
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201 Centre Plaza Dr., Suite 7
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Court of Appeal
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On November 1, 2021, I also transmitted a PDF version of this document via email, to each of the following using the email address indicated:

Office of the County Counsel: appellate@counsel.lacounty.gov

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Mother's Counsel: Landon Villavaso, Esq.: landon@lvlaw.org

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Attorney for Respondent: William Thetford:

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Honorable Craig S. Barnes, Dept. 405, c/o Clerk of the Superior Court,

Edelman Children's Court: juvjoappeals@lacourt.org

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on November 1, 2021, at El Cajon, California.



Tate Lounsbery

EXHIBIT 1



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Legislative History of **CALIFORNIA PENAL CODE** **§ 11165.4**

As Derived From
Former Penal Code § 11165(e)

As Added By
Statutes of 1980, Chapter 1071, § 4
Senate Bill 781 – Rains

Part 1

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Authentication of the Records and Table of Contents

Legislative History Research Report Regarding:
CALIFORNIA PENAL CODE § 11165.4
As Derived From Former Penal Code § 11165(e)
As Added By Statutes of 1980, Chapter 1071, § 4, Senate Bill 781 – Rains
Part 1

I, Carolina C. Rose, declare that this report includes:

- *Historical documents surrounding the adoption of the above enactment.* These documents were obtained by the staff of Legislative Research & Intent LLC and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

Since 1983 LRI has specialized in the historical research surrounding the adoption, amendment and/or repeal of California statutes, regulations and constitutional provisions pursuant to California Code of Civil Procedure § 1859 which states in pertinent part: "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible" Our research and expert witness services have assisted the courts in understanding and applying the underlying purpose of enactments in countless cases, such as *Redlands Community Hospital v. New England Mutual Life Insurance Co*, 23 Cal. App.4th 899 at 906 (1994). LRI also provides similar research for other states and at the federal level. (Formerly Legislative Research Institute and Legislative Research, Incorporated.)

- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed April 23, 2012, in Sacramento, California.

Carolina C. Rose, President

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PRIMARY SOURCE RECORDS (UNPUBLISHED HARDCOPY): At least one official California source is cited for the primary source records provided in this report. Multiple copies may have been obtained from various sources (primarily State Archives, the state library system and/or legislative offices), but the clearest/most legible version was selected for this report.

ENACTMENT HISTORY

GENERAL

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NOTE: The Senate *fiscal committee* reported the bill out on a “Rule 28.8” (per the final calendar), signifying an insignificant impact on the State General Fund – eliminating the need for a fiscal hearing and vote. The bill is then moved on to the next stage of legislative deliberations – the Senate floor.

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Ways & Means Committee
(Source: State Archives: Assembly Committee on Ways & Means)

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(Source: State Archives: Department of Finance)

NOTE: The Assembly reported the bill off the *floor* and to the Senate on “Consent,” signifying lack of controversy, no debate or discussion, with the roll-call substituting for the vote.

SENATE "CONCURRENCE"

NOTE: If the bill was amended "in the other house" (i.e., an Assembly Bill amended in the Senate or vice versa) it must return to the house of origin for "concurrence" on the other house's amendment(s). Concurrence results in immediate passage to the enrolled bill file (to the Governor). Nonconcurrence forces the bill into a joint house "conference committee."

Here there was not concurrence.

CONFERENCE COMMITTEE DOCUMENTS

NOTE: If the house of origin refuses to concur with amendments made in the other house, the bill is assigned to a joint house "conference committee." This committee adopts a report (proposed amendments) which must then be approved by both houses via floor action. If the report is not adopted, a new conference committee is convened. See Salem v. Superior Court (1989) 211 Cal.App.3d 595, 601 for use of conference committee reports. Here the first and only conference report was adopted.

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Volume 3

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1980

Constitution of 1879 as Amended

**Measures Submitted to Vote of Electors,
Primary Election, June 3, 1980
and General Election, November 4, 1980**

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature**

1979–80 Regular Session



Compiled by
BION M. GREGORY
Legislative Counsel

moved or operated upon a highway after January 1, 1982, unless the owner makes application for a license plate and, when received, attaches it to the motorized bicycle as provided in this article.

(c) Any motorized bicycle currently licensed pursuant to Division 16.7 (commencing with Section 39000) on July 1, 1981, may be operated upon a highway until July 1, 1982.

5038. The department shall establish a record system that provides for identification of stolen motorized bicycles.

5039. Notwithstanding any other provision of law, no dealer, manufacturer, salesman, or representative of motorized bicycles exclusively is required to be licensed or permitted pursuant to Chapter 4 (commencing with Section 11700) of Division 5.

SEC. 2. Section 39013 of the Vehicle Code is repealed.

SEC. 3. The sum of twenty-nine thousand five hundred sixty dollars (\$29,560) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles to implement Article 8.1 (commencing with Section 5030) of Chapter 1 of Division 3 of the Vehicle Code.

SEC. 4. No appropriation is made by this act pursuant to Section 2231 or 2234 of the Revenue and Taxation Code or Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be because this act creates a new crime or infraction, changes the definition of a crime or infraction, or eliminates a crime or infraction. Furthermore, this act does not create any present or future obligation to reimburse any local agency or school district for any costs incurred because of this act.

CHAPTER 1071

An act to add Article 2.5 (commencing with Section 11165) to Chapter 2 of Title 1 of Part 4 of, and to repeal Sections 11161.5, 11161.6, and 11161.7 of, the Penal Code, relating to child abuse.

[Approved by Governor September 25, 1980. Filed with
Secretary of State September 26, 1980.]

The people of the State of California do enact as follows:

SECTION 1. Section 11161.5 of the Penal Code is repealed.

SEC. 2. Section 11161.6 of the Penal Code is repealed.

SEC. 3. Section 11161.7 of the Penal Code is repealed.

SEC. 4. Article 2.5 (commencing with Section 11165) is added to Chapter 2 of Title 1 of Part 4 of the Penal Code, to read:

Article 2.5. Child Abuse Reporting

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 261.5 (unlawful sexual intercourse), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent failure of a person having the care or custody of any child to protect a child from severe malnutrition or medically diagnosed nonorganic failure to thrive. For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in such situation that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of suspected physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential

care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

11166. (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she reasonably suspects has been the victim of child abuse shall report such suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such 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.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or its emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency.

(c) Any other person who had knowledge of or observes a child whom he or she reasonably suspects has been a victim of child abuse may report such suspected instance of child abuse to a child protective agency.

(d) When two or more persons who are required to report are present and jointly have knowledge of a suspected instance of child abuse, 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 such 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 such report.

(e) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any

sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

(f) A county probation or welfare department shall immediately or as soon as practically possible report by telephone every instance of suspected child abuse as defined in Section 11165 reported to it to the law enforcement agency having jurisdiction over the case, and to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and shall send a written report thereof within 36 hours of receiving the information concerning the incident to that agency.

A law enforcement agency shall immediately or as soon as practically possible report by telephone every instance of suspected child abuse reported to it to county social services and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and shall send a written report thereof within 36 hours of receiving the information concerning the incident to such agency.

11167. (a) A telephone report of suspected child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led such person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the suspected case of child abuse.

(c) Persons who may report pursuant to subdivision (c) of Section 11166 are not required to include their names. The identity of all persons who report under this article shall be confidential and disclosed only by court order or between child protective agencies or the probation department.

11168. The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Such forms shall be distributed by the child protective agencies.

11169. A child protective agency shall forward to the Department of Justice a preliminary report in writing of every case of suspected child abuse which it investigates, whether or not any formal action is taken in the case. However, if after investigation the case proves to be unfounded no report shall be retained by the Department of Justice. If a report has previously been filed which has proved unfounded the Department of Justice shall be notified of that fact. The report shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the

Department of Justice.

11170. The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169 of any information maintained pursuant to Section 11110 which is relevant to the suspected instance of child abuse reported by the agency. The indexed reports retained by the Department of Justice shall be continually updated and shall not contain any unfounded reports. A child protective agency shall make such information available to the reporting medical practitioner, child custodian, or guardian ad litem appointed under Section 318 of the Welfare and Institutions Code, if he or she is treating or investigating a case of suspected child abuse.

When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

11171. (a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse and determining the extent of such child abuse.

(b) Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

11172. (a) No child care custodian, medical practitioner or nonmedical practitioner reporting a suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this section unless it can be proved that a false report was made and the person knew or should have known that the report was false. No person required to make a report pursuant to this section, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating such photographs with the reports required by this section. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of such photographs.

(b) Any person who fails to report as required by this article an instance of child abuse which he or she knows to exist or reasonably should know to exist is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars (\$500) or by both.

11174. The Department of Justice, in cooperation with the State

Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in subdivision (g) of Section 11165, in group homes or institutions and shall ensure that every investigation of such alleged child abuse is conducted in accordance with such regulations and guidelines.

SEC. 5. In reenacting the child abuse reporting law, it is the intent of the Legislature to clarify the duties and responsibilities of those who are required to report child abuse. The new provisions are designed to foster cooperation between child protective agencies and other persons required to report. Such cooperation will insure that children will receive the collective judgment of all such agencies and persons regarding the course to be taken to protect the child's interest.

In enacting Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of the Penal Code, the Legislature recognizes that the reporting of child abuse and any subsequent action by a child protective agency involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child. Therefore, it is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline.

In repealing Sections 11161.5, 11161.6, and 11161.7 of, and in reenacting the Child Abuse Reporting Law in Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of, the Penal Code, it is not the intent of the Legislature to alter the holding in the decision of *Landeros v. Flood* (1976), 17 Cal. 3d 399, which imposes civil liability for a failure to report child abuse.

It is the intent of the Legislature to encourage each county welfare department to establish within the department a toll-free number for receiving reports of child abuse 24 hours a day, seven days a week.

It is the intent of the Legislature to encourage the board of supervisors of each county to establish a committee composed of representatives from the county welfare department, local law enforcement agencies, county probation department, county health department and other persons representative of the population to be served, and any other person the board of supervisors deems appropriate, which would establish guidelines for the sharing of information and the coordination of the investigation of cases of child abuse.

It is the intent of the Legislature to encourage the county welfare or probation departments to promptly perform for each mandated report they receive and each report received pursuant to subdivision (b) of Section 11166 a thorough assessment to determine all of the following:

(a) The composition of the family or household, including the name, address, age, sex, and race of each child named in the report, and any siblings or other children in the same household or in the

care of the same adults.

(b) Whether there is reasonable suspicion to believe that any child in the family, household, or child-care facility is being abused or neglected and a determination of the person or persons apparently responsible for the abuse or neglect.

(c) The immediate and long-term risk to each child if he or she remains in the existing environment.

(d) The protective treatment and ameliorative services that appear necessary to help prevent further child abuse or neglect.

SEC. 6. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act pursuant to these sections because the duties, obligations, or responsibilities imposed on local agencies or school districts by this act are such that related costs are incurred as part of their normal operating procedures, and because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1072

An act to add Section 1157.5 to the Health and Safety Code, and to amend Sections 16702 and 16704 of the Welfare and Institutions Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1980. Filed with
Secretary of State September 26, 1980]

The people of the State of California do enact as follows:

SECTION 1. Section 1157.5 is added to the Health and Safety Code, to read:

1157.5. Upon request of the board of supervisors of any county which received public health services or funding, or both, during the fiscal year 1979–80 pursuant to Section 1157, the State Department of Health Services shall transfer the dollar value of such services or funding, or both, as an allocation to the county pursuant to Part 4.5 (commencing with Section 16700) of Division 9 of the Welfare and Institutions Code. For purposes of this section, the dollar value of such services or funding, or both, shall include the direct and indirect costs appropriated to the State Department of Health Services to provide public health services to the county pursuant to Section 1157 for the fiscal year preceding the effective date of the request to transfer funds, less any funds allocated from appropriations for child health and disability prevention programs as described in Article 3.4

STATE OF CALIFORNIA
Supreme Court of California

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