



## The Sonoma County Grand Jury

### APPLICATION OF THE CHILD ABUSE CENTRAL INDEX

July 1, 2004

#### Summary

The 2003-2004 Sonoma County grand jury investigated the procedure followed to place an individual's name on the Child Abuse Central Index (CACI). The State Department of Justice is responsible for the organization and maintenance of CACI. It serves as a repository for the names of citizens who have been deemed dangerous to children. Access to the names listed on the CACI is limited to employers who hire people whose jobs involve working with children and certified agencies concerned with children's welfare.

Names are listed on the CACI by Child Protective Services (CPS) as a result of investigations conducted by county C P S. and /or law enforcement personnel. CPS is also known as Family, Youth & Children's Services Division. Investigations of alleged child abuse result in one of three report classifications: *substantiated*, *inconclusive* or *unfounded*. Names in the CACI *inconclusive* category are automatically deleted from the list after 10 years if there are no further incidents, whereas those names reported as *substantiated* remain for life. If the allegations are *unfounded*, no listing is made. A person "listed" has the right to appeal the decision but only to a manager of the agency responsible for the listing. This exhausts appeal at the county level. If unsuccessful, the listed individual can pursue further recourses and may want to seek legal counsel.

This investigation is focused on the middle category, the *inconclusive* report. The grand jury is recommending a change to the CPS investigatory process and recommending that CPS support legislative changes which would provide for due process to the persons whose names are to be placed on the CACI list.

#### Reason for the Investigation

The grand jury received a complaint from a citizen whose name was placed on the CACI as a result of an *inconclusive* report (defined below). The citizen maintained that the listing had been done with insufficient cause and without a criminal charge of child abuse. As it stands now the statutory scheme does not require a criminal complaint to be filed or for a court ruling before a listing is made. Had a criminal complaint been filed and had there been a criminal proceeding with a court hearing, however, the person would have had the opportunity to refute the charges.

#### Background

The CACI is an essential source of information for people legally required to screen staff who work with children.

Investigations done by Child Protective Services (CPS) social workers and/or law enforcement, usually in response to a complaint, lead to a finding and a CPS "report." The report must

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conclude that complaint allegations result in one of the following categories: *substantiated*, *inconclusive* or *unfounded*. The first two categories require a CACI listing (Penal Code Section 11165.12)

The definition of an *inconclusive* report, as found in the *California Penal Code*, referred to above, is "a report which is determined by the investigator who conducted the investigation not to be unfounded, but in which the findings are *inconclusive* and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred."

### Investigative Procedures

The grand jury interviewed the following persons at Sonoma County Department of Human Services:

- Director, Child Protective Services (Family, Youth and Children's Services Division)
- Section Manager, Placement Services
- Section Manager, Preplacement/Preventative Services
- The complainant

The grand jury interviewed by phone:

- Supervisor of the Child Protective Program, State Department of Justice

The grand jury reviewed the following documents:

- Organizational Chart-Sonoma County Human Services Department
- *Mission Statement-Family, Youth & Children's Services Division*
- *A Guide to Reporting Child Abuse to the California Department of Justice*. October 1999.
- *California Penal Code*, Sections 11165.6 and 11165.12

### Findings

F1. Investigations into suspected child abuse situations result in a Child Protective Services report and can result in a Child Abuse Central Index listing. The investigator's findings and conclusions determine the classification of the report with its consequences as follows:

- |                        |   |
|------------------------|---|
| ▪ <i>Substantiated</i> | Listed Permanently                            |
| ▪ <i>Inconclusive</i>  | Listed for 10 years (if no further incidents) |
| ▪ <i>Unfounded</i>     | Not Listed                                    |

F2. The alleged offender's first recourse is to appeal the decision regarding placement on the CACI to a CPS manager who works for the same agency that did the investigation and made the report. The next level of appeal would require legal action.

F3. There is wide latitude in developing and interpreting evidence during an investigation; this allows for varying degrees of substantiation in judging that an allegation is *inconclusive* or *substantiated*, and therefore placing a name on the CACI.

F4. Since listings can be done without a criminal complaint being filed the opportunity for the person listed to prove innocence in a court of law is preempted.

F5. The individual listed is not notified prior to his or her name being listed.

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- F6. The jury heard testimony that the economic and social consequences to the listed individual could be severe and the process to remove one's name from the list is difficult to accomplish.
- F7. A person placed on the list may verify his or her status by contacting the state Department of Justice. The general public does not have access to CACI listings.
- F8. Public interest groups and the state Department of Justice are actively working to rewrite the legislation underpinning the CACI process to allow the person named to have a hearing before the listing of a name as well as a hearing to appeal for the removal of a name (SB 1312 and AB 2442).

### **Conclusion**

An *inconclusive* child abuse allegation report is sufficient to cause placement on the Child Abuse Central Index without a legal framework to ensure equal treatment during the investigation process. This results in the appearance of a "guilty until proven innocent" consequence, contrary to our legal tradition. The need to protect children is understandable but should be balanced with protection for those accused of abuse. Care must be taken to set high standards on investigation and determination of an *inconclusive* designation as it is tantamount to implying guilt. CPS supervisory oversight should monitor these high standards and designations of *inconclusive* should be subject to management review.

### **Recommendations**

- R1. Sonoma County CPS should carefully review the 'inconclusive' category and provide input and make recommendations to the Department of Justice as to whether that category should remain in any amendments to the statutory scheme.
- R2. Until the law (PC 11165.6 & 11165.12) is changed, CPS should provide grounds for the listing to allow the person listed to prepare an appeal if they choose.
- R3. Persons deemed to be such a danger to children that they are going to be listed in the CACI based upon an *inconclusive report*, should be notified, to the extent allowed by law, and given the opportunity to respond to CPS, prior to the name being released to the state Department of Justice.

### **Required Responses to Findings**

None

### **Required Responses to Recommendations**

Director, Child Protective Services (Youth, Family and Children's Services) - R1, R2, R3