

**PROTOCOL FOR FAMILY COURT AND CHILD PROTECTIVE SERVICES
WHEN ISSUES OF CHILD ABUSE OR NEGLECT SURFACE
IN FAMILY COURT PROCEEDINGS**

**&
CUSTODY TO A NON-PARENT**

November 2005

When a Family Court judge or Family Court Services (FCS) believes that a child may be a person described by Welfare and Institutions Code § 300 due to parental abuse or neglect, there are a number of options available for connecting the child and parents with Child Protective Services (CPS) for the provision of public child welfare services.

1. Make Child Abuse Referral as Mandated Reporter

a. The judge or FCS can make a child abuse referral to law enforcement or CPS (Santa Clara County Department of Family and Children's Services, Emergency Response Bureau) in accordance with the Child Abuse and Neglect Reporting Act (CANRA) described in Penal Code §§ 11165 et seq. The phone number for the Santa Clara County Child Abuse Hotline is 299-2071. CPS has the discretion to determine whether the report requires an immediate response or a 10-day response. WIC § 16504. The referent must phone the Hotline immediately and submit the required written Suspected Child Abuse Report within 36 hours. FCS should fax copies of any existing custody, visitation or restraining orders to CPS at 975-5851.

b. If the judge determines that placement with a nonparent caretaker is necessary pending outcome of the referral to CPS, the judge should:

(1) make necessary findings pursuant to Family Code § 3040-3041 ("*granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child*");

(2) order that the child "*reside temporarily with*" with the designated nonparent caretaker (as opposed to awarding the nonparent caretaker any form of "legal custody"); and

(3) grant the nonparent caretaker the "*temporary right*" to make necessary health, education and welfare decisions for the child pending outcome of the CPS investigation and further order of the court (as opposed to awarding the nonparent caretaker any form of "legal custody").

c. The judge should include in the court order described above a further hearing date in Family Court in 40-60 days. DFCS will provide FCS with a letter of disposition (with

explanation) or other written summary. DFCS and FCS may share oral and written information in accordance with local Superior Court Rules and Standing Orders.

2. Make Child Abuse Referral with a Finding of Immediate Danger

a. If the judge believes that the child's situation is grave enough to warrant an immediate response by CPS, and the judge is considering whether to order the child into protective custody, the court can make a finding based upon the evidence presented that there is *reason to believe that the child is a person described by WIC § 300 AND either (a) the child has an immediate need for medical care, or (b) the child is in immediate danger of physical or sexual abuse, or (c) the child's physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety.* WIC §§ 305, 340. CPS will provide an immediate response (within two hours) to any referral that contains this legal finding. In the alternative, CPS will immediately notify FCS that no emergency response social worker is available to respond within two hours. The court can then decide whether to order the child into protective custody as described below. The court should set a further hearing in 18 days for FCS to report on the results of the CPS investigation.

3. File An Affidavit Pursuant to WIC §§ 329, 331

a. The judge or FCS can submit an affidavit to the county child welfare agency pursuant to WIC § 329 requesting the commencement of dependency proceedings in juvenile court and fax a courtesy copy to the County Counsel Child Dependency Unit at 491-4292. If the social worker fails to file a petition within three weeks after receiving the application, then the applicant may apply to the juvenile court to review the decision of the social worker per WIC § 331 and fax a courtesy copy to the County Counsel Child Dependency Unit at the number above.

4. Request a Child Sexual Abuse Investigation

The judge can request that the local child welfare agency conduct an investigation of any allegations of child sexual abuse made during a child custody proceeding and report its findings to the court pursuant to Family Code § 3027. See local Santa Clara County Protocol adopted in 2001 for § 3027 investigations. The social worker will provide the Family Court judge with a written investigative summary within 18 days.

5. Order the Parents to Contact DFCS to Request Voluntary Services

a. The judge, with the stipulation of the parties, can order the parents to seek voluntary child welfare services and cooperate with a CPS assessment of the family. FCS will refer the case to CPS by (1) phoning the referral to 299-2071 and (2) faxing the Suspected Child Abuse Report and a copy of the court order and any existing custody, visitation or restraining order to CPS at 975-5851. CPS will then assign either an immediate or a 10-

day response to assess both parents to determine whether the child is in potential danger of abuse, neglect, or exploitation; what services are appropriate and available; whether the parents are willing to accept services and participate in corrective efforts; and whether it is safe for the child to remain in the home with the provision of services. WIC § 16506.

Proposed Language for Order: "The [father/mother/parents], having been informed of their right not to participate in voluntary child welfare services offered by the Santa Clara County Department of Family and Children's Services (DFCS), hereby agree(s) to seek voluntary child welfare services and to cooperate with a DFCS assessment of the family. The parents shall be responsible to follow through with any services deemed appropriate by DFCS. DFCS staff and Family Court Services staff are authorized to share relevant written and verbal information in accordance with Local Rule 4.1.L."

b. The judge should include in the court order described above a further hearing date in Family Court in 40-60 days for the parents to present a copy of the signed voluntary or informal supervision agreement or proof that a community agency is involved with the family. CPS will provide FCS with a letter of disposition with explanation or other written summary.

Note: If a parent resides outside Santa Clara County, CPS will attempt to contact that parent by phone but CPS is precluded from conducting an investigation in another county. DFCS can request courtesy assessments from other counties but other counties are not obligated to respond.

c. The Family Court is not authorized to order the county welfare agency to provide informal supervision, family maintenance or family reunification services to a child or parents. Only the juvenile court can order such services once a petition is filed under WIC § 300. See WIC §§ 16506, 16507; Family Code § 3026.

6. Refer the Family to Probate Court for the Appointment of a Legal Guardian

If the parents are unable or unwilling to provide proper care for the child, and there is a caretaker willing to assume guardianship of the child, the judge or FCS may refer the parents and caretaker to the appropriate resources at Probate Court to seek an order appointing a legal guardian for the child.

7. Order Law Enforcement to Place Child Into Protective Custody and Deliver Child to Children's Shelter

a. The judge can exercise the court's inherent authority to order law enforcement to place a child into protective custody and deliver the child to the county child welfare agency for

investigation.¹ The court should only do so upon making a finding, based upon evidence presented to the court, that there is *reason to believe that the child is a person described by WIC § 300 AND either (a) the minor has an immediate need for medical care, or (b) the minor is in immediate danger of physical or sexual abuse, or (c) the child's physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety.* WIC §§ 305, 340.

b. The judge should take the following steps:

1) Make findings described above.

(2) Order law enforcement to place the child into protective custody and deliver child to Children's Shelter.

(3) Provide law enforcement with a copy of the findings and order described above.

(4) Set date and time for further hearing in Family Court within five days to receive a status report from CPS describing what action has been taken.

(A) If the social worker files a § 300 petition in juvenile court, then further proceedings in family court regarding custody or visitation are stayed per WIC § 304. The dependency investigator will notify FCS that a petition has been filed.

(B) If the social worker opts for a non-judicial intervention such as a voluntary family maintenance agreement (WIC § 16506(b)), a voluntary placement agreement (WIC § 16507.3), or an informal supervision agreement (WIC § 301), then Family Court will maintain continuing jurisdiction over the child. The social worker will provide FCS with a

¹We are not aware of any specific legal authority that permits a superior court judge to order a child placed into protective custody absent the filing of a § 300 petition by the social worker. WIC § 340. However, when evidence presented to the court in a family law proceeding demonstrates the threshold level of risk described above, it seems appropriate for the court to exercise its inherent power under the doctrine of *parens patriae* to order a child into protective custody.

copy of any service agreement.

(C) If the petition is filed but subsequently dismissed without the child being made a dependent, the social worker shall notify FCS that the petition was dismissed. This will allow the Family Court to resume jurisdiction over the case.

(c) Upon receiving the child from law enforcement, the county child welfare agency must conduct an immediate investigation. WIC § 328. The social worker must release the child to the parent unless one or more of the following conditions exist: (a) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child; (b) continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative; (c) there is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court; (d) the child has left a placement in which he or she was placed by the juvenile court; (e) the parent or other person having lawful custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code and did not reclaim the child within the 14-day period specified in subdivision (e) of that section.

8. Share Information

CPS and FCS shall share oral and written information in accordance with local Superior Court Rules and Standing Orders.

Protocol Team:

Judge Leonard Edwards, Judge Mary Ann Grilli, Judge Dolores Carr, Judge Paul Bernal, Judge Katherine Lucero, Commissioner Kristine McCarthy, Commissioner Constance Jiminez, Jean Pennypacker, Steve Baron, Sandy Clark, Lilly Grenz, Will Lightbourne, Leroy Martin, Ken Borelli, Connie Vega, Justin Henry, Janice Miles, Diane Bennett, Carol Robinson, Teri Robinson, Mike Clark.

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mike.clark@cco.co.scl.ca.us