

CACI: Child Abuse Central Index: Guilty Until Found Innocent

1. SUMMARY

2009, Orange County added the names of 792 county residents to the state list of child abusers based on investigations that did not establish sufficient evidence to say that abuse had occurred. The names of the accused were sent to the Child Abuse Central Index (CACI) in an Inconclusive category. Those accused with an inconclusive report can remain on the list for 10 years from the last report.

In their attempt to protect children from individuals who might pose a risk, the County Department of Children and Family Services and local police departments report allegations of child abuse to the California Department of Justice (CDOJ), which maintains a statewide list of individuals suspected of child abuse. This list is made available to employers who have interaction with children, including schools, law enforcement, child welfare agencies, foster homes, adoption agencies, and licensed child care homes.

The process and guidelines for placing someone on the Child Abuse Central Index (CACI) based on an Inconclusive finding are confusing, highly subjective and provide little protection for those individuals falsely accused of abuse. In a laudable attempt to protect children, the CACI process jeopardizes the reputation and employment status of thousands of Orange County residents.

This Grand Jury report examines the statutory basis for the Child Abuse Central Index and the role of CFS and local police agencies in evaluating allegations of child abuse and adding names to the CACI list. It also focuses on the delicate balance of protecting children from abuse while protecting individuals from false claims and inappropriate findings of child abuse.

The Grand Jury found that CFS performs an outstanding job of investigating child abuse and reporting. There is an effective method of handling grievances and reviews when requested.

Abbreviations

CACI —	Child Abuse Central Index
CANRA —	Child Abuse and Neglect Reporting Act
CDOF —	California Department of Justice
CFS —	Children and Family Services
CPS —	Children Protective Services (Name used by Public for CFS)
PCWTA —	Public Child Welfare Training Academy
QA —	Quality Assurance

The California Penal Code requires that a result of an Inconclusive finding be reported and placed on the Child Abuse Central Index because there is insufficient evidence to make a determination of whether abuse occurred.

This represents a conflict with the American legal principle of innocent until proven guilty.

2. REASON FOR STUDY

The 2009-2010 Orange County Grand Jury received letters complaining about the difficulty of removing names from CACI. Although the Grand Jury has no authority to investigate the CDOJ CACI at the state level, the CODJ has delegated to the local Orange County agencies the responsibility to add and delete names from CACI.

3. METHOD OF STUDY

The Grand Jury completed its study through interviews with Hot Line staff and emergency response investigators at Children and Family Services as well as in-depth discussions with the administrative and program leadership of the agency. The Grand Jury interviewed local police agencies and

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reviewed their policies and procedures. The Grand Jury obtained CACI definitions and requirements from the state Department of Justice and reviewed internal reports and documents issued by CFS and local police agencies. Additionally, the Grand Jury reviewed all appropriate state and federal guidelines regarding Child Abuse Central Index and reports published by prior California Grand Juries.

4. BACKGROUND AND FACTS

4.1 Child Abuse Definition

There are several kinds of child abuse defined in the California Penal Code:

A Child is defined as a person under the age of 18.¹

Child Abuse is defined as physical injury that is inflicted by other than accidental means on a child by another person. The term “child abuse or neglect” includes sexual abuse.²

Sexual Abuse means sexual assault or sexual exploitation.³

Neglect means the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare. The term includes both acts and omissions on the part of the responsible person.⁴

Severe neglect means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive.⁵

General Neglect means the negligent failure of a person having the care or custody of a child to pro-

vide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.⁶

The willful harming or injury of a child or the endangering of the person or health of a child means a situation in which 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 the child to be placed in a situation in which his or her person or health is endangered.⁷

Unlawful 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.⁸

4.2 What Is CACI?

The Child Abuse Central Index (CACI) is a database kept by the California Department of Justice for the use of law enforcement and agencies as well as employers who deal with children. The list was created as a result of the State Legislature enacting the Child Abuse and Neglect Reporting Act (CAN-RA). Organizations that deal with children may check to determine if a volunteer’s/employee’s name is on the list, which could result in a job refusal or dismissal.

4.3 Categories of Reports

The Penal Code lists three types of findings for investigations of reports of abuse:

a) **Unfounded report** means a report that is determined by the investigator who conducted the

¹California Penal Code Section 11165

²California Penal Code Section 11165.6

³California Penal Code Section 11165.1

⁴California Penal Code Section 11165.2

⁵California Penal Code Section 11165.2(a)

⁶California Penal Code Section 11165.2(b)

⁷California Penal Code Section 11165.3

⁸California Penal Code Section 11165.4

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investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

This finding is not reported to CACI but is maintained indefinitely at the local level by CFS.⁹

b) Substantiated report means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined has occurred.

By law, this finding must be reported to CACI, and is maintained on CACI indefinitely. General Neglect (no physical injury to the child has occurred) is exempt from reporting.⁹

c) Inconclusive report means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.¹⁰

By law, this finding must be reported to CACI. General Neglect (no physical injury to the child has occurred) is exempt from reporting. The submitted reports are maintained by CACI for 10 years from the date of the last report on the same person.¹¹

4.4 Inconclusive Reports

The county's Children and Family Services and police agencies added 792 Orange County residents to the California Department of Justice Child Abuse Central Index in 2009, although lacking sufficient evidence to conclude if child abuse had actually occurred. This attempt to protect children from harm results in a potential for false accusation and violates

⁹California Penal Code Section 11169 (a)

¹⁰California Penal Code Section 11165.12

¹¹California Penal Code Section 11170 (3)

the principle of innocent-until-proven-guilty.

An Inconclusive report means that there is insufficient evidence to determine either a Substantiated (guilty) or Unfounded (not guilty) finding. A finding of Inconclusive must be reported to CACI and may put the accused at risk of losing the ability to make a living in a job dealing with children. Accused persons may request a grievance to prove innocence.

There are numerous examples in which a court finding in favor of the accused did not remove the person's name from CACI. Children and Family Services is not required to respond to a court action. CFS may determine there are other reasons to retain the name on CACI despite court action.

Since CACI listings can be made without a criminal complaint being filed there is no opportunity for the accused to prove innocence in a court of law.¹²

Although the Grand Jury recognizes that the findings set forth in the Penal Code and the data base kept by the Department of Justice are not within their purview, agency staff and law enforcement personnel expressed frustration to the Grand Jury about the Inconclusive finding. Their recommendations ranged from eliminating this category to allowing latitude in determining which Inconclusive findings are reported to CACI.

4.5 Children and Family Services and Its Functions

CFS and law enforcement agencies are responsible under the Child Abuse and Neglect Reporting Act (CANRA) for reporting names for addition to CACI.¹³ Children and Family Services is the department within the Social Services Agency responsible for a child's welfare.

¹²Health and Social Services Child Abuse Reporting, Solano County Grand Jury, 2008-2009

¹³AB No. 1241 chapter 916 (3)

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One of the main functions of CFS is investigating child abuse charges. Most of these investigations are triggered by a phone call to the department's 24-hour "Hot Line." The Hot Line is manned by trained senior staff that decides if the call warrants immediate response. If it does, a field worker will be dispatched in 24 hours or less. The agency has 10 days to respond to other calls, with a typical response time of three days or less. In 2009, there were 6,641 reports assigned for immediate response and 20,416 were given 10 days to respond.¹⁴

The majority of calls are from sources that are required to report suspected abuse including teachers, medical personnel and many others.¹⁵ Reports can come from the public and may be submitted anonymously. There is no caller ID on the Hot Line phones in order to ensure caller confidentiality. All reports are given the same credibility and assigned a priority category.

The investigating field workers evaluate the situation and may take law enforcement personnel with them for safety. Investigators are given wide discretion in making decisions for the safety of the child, ranging from maintaining the present arrangement to removing the child from danger.

Removing a child from the existing environment can involve many options, including placement with other family members, other responsible parties, or in county or private facilities. CFS supervisors review the investigation in a collegial process before deciding whether the report will be classified as: Substantiated Inconclusive, or Unfounded.

When a name is placed on CACI, the investigating social worker attempts to notify the accused in person, and a letter of notification is mailed to the accused person's last known address. Despite these efforts, some accused persons do not receive notification that their names have been added to a list of suspected child abusers.

¹⁴Orange County SSA Child Abuse Registry Statistics Report Jan 2009-Dec 2009

¹⁵California Penal Code Section 11165.7

4.6 The Role of the Police Departments

Law enforcement agencies are designated under the Child Abuse and Neglect Reporting Act as an entity that reports child abuse findings to CACI.¹⁶ The law requires the submitting agency to handle any appeals.

Many law enforcement agencies in Orange County communicate with and fully cooperate with, Children and Family Services. Local police agencies are not required to report to CFS when they refer a suspect to CACI. There is no consolidated appeals process. This can cause confusion among CFS, law enforcement and the accused when an appeal is filed.

Some police agencies interviewed by the Grand Jury do not make reports directly to the State Department of Justice. They send reports of their investigations to Children and Family Services. CFS decides whether the complaint is Unsubstantiated, Substantiated or Inconclusive and submits the required report to CACI. Children and Family Services may report the results of its child abuse investigations to law enforcement for additional criminal investigation and possible prosecution.¹⁷

4.7 Education, Training and Shadowing

The majority of the CFS employees interviewed had both Bachelor's and Master's degrees and appeared to be well versed in their field. New CFS employees without previous training in child abuse investigation will attend 160 hours of training through the Public Child Welfare Training Academy (PCWTA), a joint project of Orange, Riverside and San Diego counties. In addition, the California Department of Social Services requires 40 hours of training every 24 months for each employee.¹⁸

¹⁶AB No. 1241 chapter 916 (3)

¹⁷California Penal Code Section 11167(b) and 11167.5

¹⁸California Department of Social Services All County Letter No 08-23

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Some employees, when transferring to or being promoted within the department, had the opportunity to “shadow” their predecessor for up to two weeks. Those who had this experience thought it was valuable.

4.8 CACI Appeals Process

Persons may determine if they are listed on the Child Abuse Central Index by making a notarized request to the California Department of Justice. The CDOJ will make available to the requesting person information identifying the date of the report and the submitting agency.¹⁹

When a name has been sent to Sacramento for inclusion in CACI as a result of a Substantiated or Inconclusive finding, the person has 30 days to appeal that action through Children and Family Services. However, the time limit is not strictly enforced; hearings often are granted after the time period has expired.

CFS may resolve a grievance either by review of records or a formal hearing process then notifying CDOJ of any pertinent changes in the case disposition affecting CACI.

A grievance hearing is the final level of review. The grievance goes to a hearing officer in the Program Integrity section of the Social Services Agency. These hearing officers are separate from CFS. They do not participate in the investigations and do not report to any department or manager in CFS. This is to ensure their independence.²⁰

The hearing officer reviews pertinent files and schedules a hearing. The appellant is entitled to legal representation.

Those Police Departments independently submitting names to CDOJ utilize their own appeal process.

¹⁹California Penal Code Section 11170(3)(f)(1)

²⁰OCSSA CFS Operations Manual A-301

5. FINDINGS

Based on its investigation of CACI Child Abuse List in Orange County, the 2009-2010 Orange County Grand Jury has arrived at six principal findings, as follows:

- F.1 Agency staff and law enforcement have expressed a high degree of frustration with the Inconclusive category. It is confusing, highly subjective and provides little protection for those falsely accused of abuse. An Inconclusive finding is not consistent with the concept of innocent until proven guilty.
- F.2 Orange County police agencies can report names directly to CACI without notifying Children and Family Services.
- F.3 A court decision does not always result in removal of a name from CACI by the Children and Family Services.
- F.4 There is no system to verify that individuals received notification that their name had been placed on CACI.
- F.5 Children and Family Services is investigating child abuse in a professional and well-organized manner and maintains an unbiased appeal procedure.
- F.6 There is a high level of initial and ongoing training required for all CFS social workers.

Responses to Findings F1 through F4 are requested from the Orange County Social Services Agency.

6. RECOMMENDATIONS

Based on its investigation of the Social Services Agency in Orange County, the 2009-2010 Orange County Grand Jury makes the following four recommendations:

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- R.1 Orange County should join other counties in supporting a revision of the California Penal Code that would eliminate or modify the Inconclusive finding.
- R.2 Orange County CFS should be the central reporting agency for all county CACI reports and should conduct all grievance hearings.
- R.3 Case files should reflect oral and written notification of the suspects and any unsuccessful contact should be noted.
- R.4 Registered Mail should be considered for written notifications.

Responses to Recommendation R1 through R4 are requested from the Orange County Children and Family Services, a department of the Social Services Agency.

7. REQUIRED RESPONSES

The California Penal Code specifies the required permissible responses to the findings and recommendations contained in this report. The specific sections are quoted below:

§933.05

- (a) For purposes of Subdivision (b) of Section 933, as to each grand jury finding the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or

partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.