

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814

**REASON FOR THIS TRANSMITTAL**

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

March 14, 2008

ALL COUNTY LETTER NO. 08-13

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES
PROGRAM MANAGERS
CHIEF PROBATION OFFICERS

SUBJECT: REPORTING AND PUBLIC RELEASE OF RECORDS IN CASES OF
CHILD FATALITY OR NEAR FATALITY AS A RESULT OF ABUSE OR
NEGLECT

REFERENCE: CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT ACT
(CAPTA), AS AMENDED BY PUBLIC LAW 108-36, ENACTED JUNE
25, 2003, SECTION 106 (42 U.S.C. 5106), CALIFORNIA PUBLIC
RECORDS ACT, PENAL CODE SECTION 11174.32-11174.35,
WELFARE AND INSTITUTIONS CODE (W&IC) SECTION 827, W&IC
SECTION 10850.4, SENATE BILL 525 CHAPTER 1012 STATUTES OF
1999, ASSEMBLY BILL 1151 CHAPTER 847 STATUTES OF 2003,
SENATE BILL 39 CHAPTER 468 STATUTES OF 2007, ALL COUNTY
LETTER 06-24

The purpose of this All County Letter (ACL) is to inform county child welfare agencies (CWS/Probation) of changes in policy for reporting and public disclosure of information in cases of child abuse or neglect that result in fatalities or near fatalities¹ that occur on or after January 1, 2008. This policy is not retroactive for cases of child abuse or neglect that resulted in fatalities prior to January 1, 2008. This ACL includes pertinent information integrated from ACL 06-24. This ACL supersedes ACL 06-24.

The recent passage of Senate Bill (SB) 39 (Chaptered 2007), effective January 1, 2008, clarifies the disclosure of child fatality information in California. The SB 39 requires that local agencies respond directly to public requests for information related to a child

¹ The definition of "near fatality" is "a severe childhood injury or condition caused by abuse or neglect which results in the child receiving critical care for at least 24 hours following the child's admission to a critical care unit(s)."

fatality that is the result of abuse or neglect. The Child Abuse and Neglect Prevention and Treatment Act (CAPTA), requires that states disclose to the public findings and information about cases of child abuse and neglect that result in fatalities or near fatalities. The California Department of Social Services (CDSS) will continue to collect a statement of findings and information for both child fatalities and near fatalities that are a result of abuse or neglect via notifications submitted by counties to CDSS.

The CDSS will also collect information on fatalities where there is a reasonable suspicion of abuse or neglect. This statement of findings and information for near fatalities will meet the CAPTA requirements for disclosure as required Section 106(b)(2)(A)(x).

Child Fatality/Near Fatality County Statement of Findings and Information, SOC 826 (Revised 03/08):

The SOC 826 formerly known as the Child Fatality/Near Fatality County Questionnaire has been revised and renamed Child Fatality/Near Fatality County Statement of Findings and Information, copy attached, to reflect the reporting requirements of SB 39 and to remain in compliance with CAPTA. **Please note the form number has remained unchanged. It is imperative that CWS/Probation use only the revised form upon receipt of this ACL.** When completing this form do not include a narrative. Complete the parts that correspond to a fatality that is suspected as a result of abuse or neglect, a fatality that is determined to be as a result of abuse or neglect, or a near fatality that is determined to be as a result of abuse or neglect.

Reporting Fatalities to CDSS:

For **ALL** cases of child fatalities wherein there is **reasonable suspicion**² that it is as a result of abuse or neglect, the county shall submit the SOC 826 (3/08) to the CDSS. The SOC 826 (3/08) with Part A completed shall be submitted within **five (5)** business days of learning of the incident.

A follow-up SOC 826 (3/08) shall be completed and re-submitted to the CDSS within **ten (10)** business days of the determination of cause of the fatality, or within ten (10) business days of when CWS/Probation is informed of the determination by the investigating agency (e.g. Coroner or law enforcement).

² Penal Code Section 11166(a)(1) states that "reasonable suspicion" "means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate, on his or her training, to suspect child abuse or neglect."

Reporting Responsibilities:

For cases of child fatalities wherein the child does not have an open CWS/Probation referral or case, the county in which the incident occurred has the responsibility for reporting the fatality to the CDSS and to the public, if requested.

If a child has an open CWS/Probation referral or case and dies in another county, the county that holds the child's record will have the responsibility for reporting the information to the CDSS using the SOC 826 (3/08) as well as to respond to any public request for information. If the child fatality occurred outside of the county of jurisdiction, the county where the incident occurred should direct any public inquiries for information to the county which holds the child's record.

Reporting Near Fatalities to CDSS:

For all cases of child near fatalities wherein it is **determined** that the incident occurred as a result of abuse or neglect, the counties shall submit the SOC 826 (3/08) to the CDSS within **ten** (10) business days of the determination, or within ten (10) business days of when CWS/Probation is informed of the determination by the investigating agency. The reporting responsibilities are similar to that of reporting fatalities; however, the counties will not respond directly to any public request for information regarding near fatalities and will refer any inquiries to CDSS.

Release of Information Regarding a Child Near Fatality:

Although SB 39 did not impact near fatalities, the CDSS will continue to collect the SOC 826 (3/08) in accordance with the requirements of CAPTA. The CDSS has the responsibility for responding to public requests for information on near fatalities determined to be as a result of abuse or neglect. Any public information request made to the county should be referred to CDSS. The CDSS will use the SOC 826 (3/08) submitted by the counties for the pertinent information.

Upon receipt of a public request for information regarding a near fatality, the CDSS will notify the reporting county that a public request has been made and will provide the name of the person or entity making the request and when the information will be released.

Public Release of Information by CWS/Probation Regarding a Child Fatality:

The SB 39 requires CWS/Probation to release to the public, upon request, the following information within five business days of learning of a child fatality wherein there is reasonable suspicion that the **fatality was a result of abuse or neglect**:

The age and gender of the child.

The date of fatality.

Whether the child was in foster care or in the home of his/her parent/guardian at the time of fatality.

Whether an investigation is being conducted by Law Enforcement (LE) or CWS/Probation

The revised SOC 826 (3/08) meets the mandated release criteria under SB 39 for suspected cases of child abuse or neglect that result in fatality and may be used for the public release of information. Redact the shaded box prior to release. Any inquiries to the CDSS for release of information will be referred to the county with reporting responsibility.

Release of Additional Documents on Child Abuse or Neglect that result in Fatality:

When the investigation determines that the fatality was NOT a result of abuse/neglect, no further information shall be released.

If an **investigation** by CWS/Probation, Law Enforcement, or a coroner or medical examiner **concludes** that the child fatality **occurred as a result of abuse or neglect**, documents specified by SB 39 must be released by the county custodian of records, upon request. The documents listed below must be released within ten (10) business days of the request or completion of the investigation, whichever is later. Per the Public Records Act of California, "statutory fees" set by the Legislature may be applied by the counties to offset the direct cost of duplication.

Prior to the release of any documents, the custodian of the records must redact any personal identifying information, any information that would jeopardize a criminal investigation or proceeding, after consultation with the district attorney, or any information that is privileged, confidential or not subject to disclosure pursuant to state or federal law. The names, addresses, telephone numbers, ethnicity, religion, or other identifying information of any person, or institution other than the county or the CDSS, shall be redacted prior to releasing any document. The SB 39 directs CDSS to promulgate a regulation by January 1, 2009, listing federal and state laws regarding information that is privileged, confidential, or not subject to disclosure and set standards

for redactions. Prior to the release of regulations, CWS/Probation may consult with their county counsel or the CDSS if confidentiality questions arise.

Information that is required to be released by CWS/Probation upon public request is contained in W&IC 10850.4, which was added by SB 39, includes:

The age and gender of the child.

The date of death.

Whether the child was in foster care or in the home of his/her parent/guardian at the time of death.

Whether an investigation is being conducted by LE or CWS/Probation.

For cases where the fatality occurred in the home of a parent or guardian, all previous referrals of abuse/neglect of the deceased child while living with that parent or guardian as well as the following documents:

The emergency response (ER) referral information form and the ER notice of referral disposition form completed by CWS/Probation relating to the abuse/neglect that resulted in the fatality.

Any cross reports by CWS/Probation to LE relating to the deceased child.

All risk and safety assessments completed by CWS/Probation relating to the deceased child.

All health records of the deceased child, excluding mental health records, related to the child's death and previous injuries reflective of a pattern of abuse/neglect.

Copies of police reports about the person against whom the child abuse or neglect was substantiated.

For cases where the fatality (as a result of abuse or neglect) occurred in foster care, the following documents pertinent to that foster parent shall be released in addition to those listed above:

Records pertaining to the foster parent's initial licensing, renewals, and type of license(s) held, if in the case file.

All reported licensing violations, including notices of action, if in the case file.

Records of training completed by the foster parents, if in the case file.

Please note that in cases of a child fatality in out-of-home placement, the name, date of birth, and date of death of the child must be released if requested in accordance with the Public Records Act (Government Code Section 6252.6).

It should be emphasized that SB 39 has modified W&IC Section 827 so that persons seeking to obtain the information about a child fatality will no longer be required to petition the court. The information as specified by SB 39 will, upon request, be released by CWS/Probation as described above. However, persons seeking information not

authorized for release by W&IC 10850.4 must still petition the court as per W&IC Section 827 for a decision on whether that information may be released.

Changes to W&IC Section 827 Regarding Objections to Release of Documentation Otherwise Required Under W&IC 10850.4:

This process is applied to the objection to the release of any part of the documents requested. Upon receiving a request for documents from the deceased child's juvenile case file, the custodian of records must notify and provide a copy of the request to counsel for any child connected with the file. Counsel may seek to limit release of information mandated in W&IC 10850.4, but must do so by petitioning the court. The juvenile court shall set the matter for hearing no more than 60 calendar days from the date of petition. First, counsel must establish to the court that there is a detriment to a child connected to the case by release of specified information. If a detriment is established, counsel must then convince the court that the redactions specified in W&IC 10850.4 are not sufficient to avert the harm.

This process is only for objections made to W&IC 10850.4 information that is required, without court intervention, to be released regarding child fatalities that are the result of abuse or neglect. If additional information is requested, or information related to types of cases not covered by W&IC 10850.4, a W&IC 827 petition is required.

Public Comment by CWS/Probation and CDSS / Liability for Disclosure:

The SB 39 provides that once documents have been released regarding a child fatality, CDSS or CWS/Probation may comment on the case within the scope of release.

This provision does not extend to near fatalities that are as a result of abuse or neglect; therefore, all requests for information on near fatalities must be submitted to the CDSS. The SB 39 also provides that a person disclosing juvenile case file information as required by law shall not be subject to suit in civil or criminal proceedings.

CWS/CMS Documentation Requirements

Penal Code 11174.34 requires CWS/Probation to create a record in the Child Welfare Services/Case Management System (CWS/CMS) of all cases of child death related to abuse or neglect, and whether or not the deceased child has any known surviving siblings. This requirement remains unchanged by SB 39. Documentation in CWS/CMS will ensure the most accurate information for CDSS to facilitate an analysis on all child fatalities and near fatalities.

This data entry instruction is unchanged from ACL 06-24:

Child Fatality

For all child fatalities either suspected or confirmed to be related to abuse or neglect, the child death information will be recorded in the "Deceased" fields on the Demographics page of the Client Notebook.

If a cross report is received on a child fatality either suspected or confirmed to be related to abuse or neglect and where there are no siblings, record in CWS/CMS as follows:

1. Create a new referral.
2. Record appropriate information in the Referral "Notebook," "ID," "Reporter" and "Assignment" pages.
3. Perform search(es) on all clients involved in the referral. Attach any matching client notebooks found in the search results to the new referral. An abstract must be opened before you can attach. Go to the Related Clients page and verify the client relationships are correct.
4. If there are no matching search results, create the clients in the "Client Management" section. Go to the Related Clients page and create the client relationships as appropriate.
5. In the "Referral Management" section, create the new allegations.
6. Information regarding a deceased child must be documented on the Demographics page of the client notebook in the "Deceased" fields.

Steps for completing the Client Disposition and/or Deceased Information when the following conditions exist:

No open case or referral: If a cross report is received on a child and there are other children in the family whose welfare must be checked or if some other services are provided to the family:

1. Create a referral.
2. The client disposition selection for this child should be "Child Dead Prior to Referral Date". (Note: The Demographics page of the client notebook must be completed on this child to record the date and death circumstances type).

Open referral: If the child dies during an investigation where there is an open referral:

1. Create a referral.
2. The disposition selection for this child should be "Child Died During Investigation". Complete the Demographics page of the client notebook to record the date and death circumstances type.

Open case: If the child dies while the case is open, regardless of the service component identified on the CWS/CMS:

1. Under case closure reason select the reason "Death of Child". Complete the Demographics page of the client notebook to record the date and death circumstance type.

Open case in out-of-home care: If the child dies while the case is open and the child is in out of home care, regardless of the service component identified in CWS/CMS:

1. Under case closure reason select the reason "Death of Child". Complete the Demographics page of the client notebook to record the date and death circumstance type.

Please note that all reports of abuse or neglect in out-of-home care settings with a substitute care provider must have a referral created within CWS/CMS. See ACL 05-09 dated April 26, 2005, for instructions.

If determination of death is received after the referral is closed, the death information on the Client Notebook should be updated by workers with the proper privileges by following the steps below:

1. From the "Client Services" section, search for the client.
2. From "Search Results" double click on "Client" to open the "Client Abstract."
3. From the "Associated Menu," highlight "Open Associated Referrals" and select "Open Associated Referrals."
4. From the "Open Associated Referrals" dialogue, highlight the appropriate referral and select "OK."
5. Open the referral and go to the "Client Management" section.
6. Highlight the client to be updated and select "OK."
7. Go to the "Demographics" page.
8. In the "Deceased" section, update the appropriate "Date" and "Death Circumstances Type" fields.

Annual Report:

The CDSS will issue an annual report in collaboration with the County Welfare Directors Association identifying the fatalities/near fatalities and any systemic issues or patterns based on the information provided in the SOC 826 (3/08). This information will be contained in the CAPTA section of the Annual Progress and Services Report of the State's Title IV-B Child and Family Services Plan and will be available to the public on the CDSS website.

ALL COUNTY LETTER NO. 08-13
Page Nine

Should you have any questions regarding this ACL, please feel free to contact the Child Welfare Policy Development and Support Unit, Child Welfare Policy and Program Development Bureau at (916) 651-6160.

Sincerely,

Original signed by Gregory E. Rose

GREGORY E. ROSE
Acting Deputy Director
Children and Family Services Division

Attachment

c: CWDA
Karuk Tribe

**CHILD FATALITY/NEAR FATALITY
COUNTY STATEMENT OF FINDINGS AND INFORMATION****INSTRUCTIONS:**

For child fatality suspected to be as a result of abuse or neglect, complete part A and submit to the California Department of Social Services (CDSS) within 5 business days of learning of incident. Upon final determination of investigation of child fatality, complete parts A and B and *send update to the CDSS within 10 business days of notification of final determination from investigating agency.*

For child near fatality determined to be as a result of abuse or neglect, complete parts A and C and submit to the CDSS within 10 business days of notification of final determination from investigating agency.

PART A - ALWAYS COMPLETE THIS INFORMATION FOR CDSS SUBMISSION.

Original Notification
Date form completed _____

Updated Notification
Date form updated _____

Note: Redact information in this box prior to the public release of this document.

COUNTY WHERE INCIDENT OCCURRED:

CWS/CMS 19 DIGIT REFERRAL # OF CHILD VICTIM:

COUNTY CONTACT AND PHONE NUMBER (INDIVIDUAL THAT CDSS WOULD CONTACT FOR ADDITIONAL INFORMATION):

CHILD'S AGE

CHILD'S GENDER:

DATE OF FATALITY/NEAR FATALITY (IF KNOWN):

MALE FEMALE

RESIDENCE OF THE CHILD AT THE TIME OF THE FATALITY/NEAR FATALITY:

Home of parent/legal guardian Foster Care/Out-of-Home Care

INVESTIGATION CONDUCTED BY:

Law Enforcement CWS/Probation

PART B - CHILD FATALITY FINDINGS - CONCLUSION OF INVESTIGATING AGENCY

DETERMINATION MADE BY:

Coroner/Medical Examiner Law Enforcement CWS/Probation

Fatality **NOT** a result of child abuse/neglect. **IF CHECKED, STOP HERE**

Fatality as a result of Abuse or Neglect

FINDING OF CHILD FATALITY DUE TO (CHECK ALL THAT APPLY):

Crime Suicide
 Non-Accidental Undetermined Other _____

PART C - CHILD NEAR FATALITY FINDINGS DETERMINED TO BE A RESULT OF ABUSE/NEGLECT

DETERMINATION MADE BY:

Physician Law Enforcement CWS/Probation

DO NOT INCLUDE A NARRATIVE; CHECK THE APPROPRIATE BOXES ABOVE

**Please fax this form to: Children's Services Operations Bureau,
Attention: Bureau Chief at (916) 651-8144.**