

CRIMINAL LAW

Child Protective Services

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"Do not trust the horse, Trojans. Whatever it is, I fear the Greeks even when they bring gifts."
Virgil's *Aeneid*, Book 2, 19 BC.

Child Protective Services ("CPS"), now known as the Health and Human Services Agency ("HHSA"), has immense powers -- far greater than law enforcement. They can arrange to have your children immediately picked up and detained at the Polinsky Center and initiate a court action to have your children made dependents of the Juvenile Court. If you do not participate in and successfully complete a reunification plan with your children, they can terminate your reunification services, terminate your parental rights and put your children up for adoption. Even if a court action is not initiated, they can make a referral to have your name placed on the Child Abuse Central Index ("CACT").

CPS workers receive referrals from daycare providers, school personnel, family members, neighbors and all mandated reporters who suspect some form of child abuse. If you suspect someone of mistreating their children, the HHSA is where you should call. If you want to maliciously make life hell for someone and their family, these are the people you call. CPS workers are also routinely summoned by police officers who have responded to homes or situations in which there are allegations of domestic violence and children were present in the home, drug seizure cases when children are present, driving under the influence cases when children were in the car, and countless other types of incidents when there is any concern for the safety of a child.

The most critical phase in any CPS inquiry is the initial interactions, conferences, and meetings with the CPS workers. Yes, you have every right to be very concerned about CPS workers coming into your home or speaking to your children. Do you have to let them in? Should you let them in? Can you tape record your interactions or statements with the workers? What do you do when they want to talk to your children alone? Do they have a right to talk to your children at their school? Do you have a right to be present when your child is questioned? Can you have a neighbor present when your child is questioned?

The Fourth Amendment protections against unreasonable searches and seizures apply to child welfare workers, as well as all other governmental employees. *Greene v. Camreta* (9th Cir.2009) 585 F.3d 1011.; *Doe v. Heck* (7th Cir.2003) 327 F.3d 492, 509 (citing *Brokaw v. Mercer County* (7th Cir.2000) 235 F.3d 1000, 1010 n. 4.; *Darryl H. v. Coler* (7th Cir.1986) 801 F.2d 893, 900. Whether or not facts and circumstances exist which establish one of the few well-delineated exceptions to the Fourth Amendment, such as consent or exigent circumstances, can only be determined on a case-by-case basis. With regard to public and private school searches and interrogations by police offices and CPS workers, the recent decision in *Greene v. Camreta, supra*, and the decision in *Doe v. Heck, supra*, raise questions about the validity of these searches under certain facts and circumstances. A child interviewed at school does have a right to ask one of the teachers or school administrators be present for the interview. If you take a hard line and refuse to permit the social worker to enter your home, be assured they will return with a police officer and demand entrance. Since you do not know what facts they have to bypass any Fourth Amendment protections, you may be labeled as uncooperative, not willing to work with CPS, and even be denied voluntary services and made to look bad in court reports. You do not have a right to record the CPS workers without their knowledge. The San Diego Grand Jury has recommended HHSAs tape record all interviews with minors. Despite this recommendation, CPS workers do not record their interviews. The legislature passed a bill requiring police officers to record all interviews with minors. The Governor vetoed the legislation. The CPS worker will not allow a parent to be present when the child is questioned. Certainly the child would have a right to have an attorney present if they had one. Some CPS workers will allow a non-involved relative like a grandparent, aunt/uncle, or a neighbor to be present when the child is questioned if requested.

The CPS worker who makes the first inquiry is an emergency response worker. This worker must make an initial assessment of the situation and determine the risk factors to the children in the home. Some of the risk factors CPS workers consider are the severity of the incident, location and description of any injury on the child's body, any history of child abuse or neglect, the child's age and vulnerability, the child's behavior and interaction with parents and siblings, the parent's ability to care for the child, parent's parenting skills/knowledge, any substance abuse, criminal behavior, or mental health history, family support relationships, any family history of abuse and the presence of a parental substitute. Other important considerations made by CPS workers are how cooperative the family is being with the investigation, whether the family appears trustworthy, whether the child will be safe if he or she is left in the home, and how cooperative the family will be in working with the CPS workers in a voluntary out-of-court plan that could include parenting classes or therapy.

When a CPS worker determines that the child cannot be safely maintained in his/her home, the CPS worker or a peace officer can remove the child by written consent of the parent/guardian or remove the child without a warrant and take temporary custody of the child under Welfare and Institutions Code §§305 and 306. Decisions to remove the child or leave them in the home are made the same day or within a couple of days thereafter. In nearly all cases when a child is removed, the County Counsel's office, which represents HHSAs, will file a petition to request the court to make the child a dependent of the Juvenile Court. Filing a petition for detention of and jurisdiction over a child must occur within 48 hours of the child's removal from his/her home, excluding non-judicial days. Statements by the parents and/or children to the CPS worker and the worker's interactions with the family will be documented by the worker and incorporated into a

report for the court at the first hearing.

If you are fortunate enough to not be dragged into court, the CPS worker can still refer your name to the Child Abuse Central Index (“CACI”). CACI is maintained by the California Department of Justice (“DOJ”) and was created by the Legislature as a purported tool for State and local agencies to help protect the health and safety of California’s children.

Reports to CACI pertain to investigations of alleged physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child. Pursuant to Penal Code §11169, local police, sheriff, probation and county welfare departments are required to forward to the DOJ a written report of every case they investigate involving known or suspected child abuse or severe neglect which is determined not to be “unfounded.” “Unfounded” is defined in Penal Code §11165.12 as “a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.” If they investigate and determine there is a “substantiated” or “inconclusive” finding, your name is referred to the DOJ for placement on CACI. Even if the investigation determined that the allegations were “inconclusive”, your name will be placed on CACI for a minimum of 10 years. A substantiated referral results in lifetime placement on CACI.

Dissemination of information on CACI is restricted and controlled by Penal Code §§11167.5 and 11170. For the most part, information on CACI is provided to aid law enforcement investigations and prosecutions and to persons, agencies and designated social welfare agencies to help screen applicants for licensing or employment in child care facilities and foster homes, and to aid in background checks for other possible child placements and adoptions. Information on CACI includes the names and personal descriptors of the suspects and victims listed on reports, the reporting agency that investigated the incident, the name or case number of the investigating agency, the type(s) of abuse investigated, and the findings of the investigation, which is either substantiated or inconclusive.

In many cases, people do not even know that their names have been placed on CACI until they are trying to adopt a child, applying for a position to work with children, or obtaining temporary placement of a grandchild or minor relatives in their care. Any person can determine if he or she is listed on CACI by making a request in writing to the DOJ. Pen. Code §11170, subd. (f)(1).

Under the current CACI procedures, within five business days of submitting an individual’s name to the DOJ for listing on CACI, the official Notice of Child Abuse Index Listing, Grievance Procedures for Challenging Reference to the Child Abuse Index and Request for Grievance Hearing forms are mandated to be sent to the individual at his/her last known mailing address. Only within the last few years has an in-person grievance hearing procedure been established. At the grievance hearing, the party contesting the listing may have an attorney or other representative present and has the ability to call witnesses and cross-examine the investigation case worker. The child may also be permitted under certain circumstances to testify at the grievance hearing.

It is highly recommended that anyone involved with CPS call an experienced dependency attorney before the initial conference with the CPS worker. In some cases, a phone call with our

assessment and advice on how to proceed, can resolve the situation. Should there be strong concerns that the children might be removed, the family will need to make immediate protective steps to alleviate the concern of the children being removed. For example, if one of the parents is accused of sexual abuse, the suspected abuser must immediately vacate the home until further assessments can be done. The other parent must demonstrate that they are fully supportive of their child. They cannot say that their child is a liar or that they do not believe him or her. Grandparents and relatives have to be immediately contacted and enlisted as placement options. The grandparents and relatives must also take a position with the CPS worker that they will support the child and his or her disclosures. The CPS worker will almost always ask the grandparent or the relative if he or she believes the suspected parent molested the child. If the answer is no, the CPS worker will determine that placement with that grandparent or relative is not an option because they will not support the child. In many domestic violence cases when the police have been called and CPS workers summoned, these same considerations apply. In some of those cases, if the family does the right things immediately, there is a chance that the children will not be removed from the home and the parents will be allowed to stay together in the home with a voluntary plan.

Experienced attorneys can play a very important role in assisting and counseling families when they receive that card on their door or an initial call from a CPS worker. The CPS workers have a job to do which is to investigate and protect children. However, if you make the wrong moves, you can get devoured by the system.