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**ORANGE COUNTY SOCIAL SERVICES AGENCY  
CFS OPERATIONS MANUAL**

**Effective Date:** December 10, 2002  
**Revision Date:** November 4, 2020

**Number:** G-0901

## **Warrants**

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| <b>Purpose</b>              | To provide guidelines on the use of warrants in social work practice.  |
| <b>Approved</b>             | This policy was approved by Anne Bloxom, Director of CFS.<br><i>Signature on file.</i>   |
| <b>Most Recent Revision</b> | <p>This revision of the Policy and Procedure (P&amp;P) includes:</p> <ul style="list-style-type: none"><li>• New guidance on requesting Court to authorization, at the time of a protective custody request, for a child to receive emergency medical care when it is determined that the child may require emergency medical care due to a known serious medical condition</li><li>• Definition of emergency medical care</li><li>• Reference to CFS P&amp;P <a href="#">Consent for Medical Care and Physical Examination</a></li><li>• Clarification that the social worker will conduct an investigation independent from law enforcement to determine whether a child should remain in protective custody</li><li>• Addition of Program Manager (PM) approval when:<ul style="list-style-type: none"><li>○ Filing a Non-Detained Petition</li><li>○ Using an exception to contacting law enforcement when serving a protective custody warrant</li></ul></li><li>• Updated legal mandates</li></ul> <p>Revised forms include:</p> <ul style="list-style-type: none"><li>• <i>Application and Declaration in Support of Warrant (F063-25-589)</i></li><li>• <i>Court Findings and Orders Authorizing Warrant (F063-25-</i></li></ul> |

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**Background**

Parents and children have a constitutional right to live together without governmental interference except in emergencies. When child protection intervention is not determined to be an emergency, the warrant process is used to provide due process for the family and an intervention method for child welfare agencies.

Warrants are requested of the Orange County Juvenile Court (Court) by Children and Family Services (CFS) staff when needing court authority for entering a home, bringing a child into protective custody, interviewing a child at school, or obtaining an investigative medical exam for a child, when neither parental consent nor exigent circumstances exist.

Warrants are also requested when parents have abducted a child who is a dependent of the Court or when a dependent has run away from court-ordered placement.

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**Definitions**

For purposes of this P&P, the following apply:

**After-Hours Service (of Warrant):** Warrant issued after 3:30 p.m. and will be served prior to 10:00 p.m. on the date of issuance.

**(Note:** Before requesting an after-hours warrant, consider whether the circumstances requiring issuance of the warrant could wait to be addressed on the following day, when the Court is open on that following day.)

**Exigent Circumstances:** An imminent situation that allows the social worker to avoid the usual procedure of obtaining a warrant in order to detain a child. This means a situation that requires immediate action to prevent bodily harm which is likely to occur in the time required for staff to obtain a warrant (i.e., a child's life or safety is threatened or evidence may dissipate if action is delayed). Factual information at the time of the child's removal that establishes "reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury" (*Wallis v. Spencer*).

A situation considered exigent must have documentable factual information to indicate the child is in imminent danger of serious bodily harm or evidence may dissipate if action is delayed and

immediate action by the social worker is reasonably necessary to avert that specific injury.

**Emergency Medical Care:** Per Welfare and Institutions Code (WIC) Section (§) 369, immediate medical, dental, surgical, or other remedial treatment required for the alleviation of severe pain, or an immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, other remedial condition, or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.

**Investigatory Medical Exam:** A physical examination that evaluates the child for physical evidence of abuse including accidental trauma, inflicted injury, disease or pregnancy; collection of forensic material; documentation of physical findings; and evaluation of medical condition. When this examination is conducted at CAST, it is often referred to as a forensic medical exam; however, an investigatory medical exam is not limited to the exams conducted at CAST. Refer to CFS P&P [Child Abuse Services Team \(CAST\) \(A-0401\)](#) for further information regarding forensic medical exams.

**Imminent:** An immediate, real threat to a child's life or health.

**Night Service (of Warrant):** Warrant issued for placing a child into protective custody between 10:00 p.m. and 7:00 a.m. when the warrant will be served immediately following issuance of the warrant. The warrant application for a night service warrant must state the specific circumstances that require night service. (**Note:** Before requesting night service of a warrant, consider that a warrant may not be necessary if exigent circumstances for removal of the child exist.)

**Qualified Immunity:** Immunity from liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights. Qualified immunity shields a government official from liability for civil damages if the law governing the official's conduct was clearly established and, under that law, the official objectively could have believed that his/her conduct was lawful. CFS staff who perform their job duties as directed by the law and agency policy may be entitled to qualified immunity.

**Reasonable Cause:** Under the Fourth Amendment, information amounting to more than a bare suspicion but less than evidence; the objective test being that the facts are such as would warrant the same belief by a reasonable person (for CFS, the objective test being that any reasonable social worker assessing the same facts

would come to the same conclusion).

**Probable Cause:** Under the Fourth Amendment, probable cause must be shown in order for law enforcement to make an arrest, conduct a search, or receive a warrant. In the context of criminal matters, probable cause is defined as sufficient reason based upon known facts to believe a crime has been committed or that certain property is connected with a crime. For CFS, the Court determines if probable cause exists for the requisite showing of risk to the child and/or need for home entry/interview/medical exam. The requisite showing allows (upon granting of a warrant) law enforcement and/or social work staff to enter a residence in order to locate a child, see and interview a child, and conduct an investigation and/or an investigatory medical exam.

**Warrant:** A writ directing or authorizing a person to act (e.g., directing a member of law enforcement to make an arrest, a search, or a seizure). For CFS, a court order authorizing law enforcement and/or social work staff to see and interview a child; enter and inspect the safety of a residence in order to locate a child, and conduct an investigation and/or an investigatory medical exam to determine whether services should be offered a family or whether a petition should be filed.

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## POLICY

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### **Consideration of Constitutional Rights**

CFS social work staff will consider a family's constitutional rights when making a decision to either obtain a warrant or take warrantless and immediate action for a child's safety.

### **Warrants**

Social work staff will enter a home for a child welfare investigation only if they have parental consent, exigent circumstances, or a warrant issued by Court authorizing entry.

#### **A. Parental Consent:**

Consent must be given by the parent, guardian, or other adult if that person has apparent authority to do so. If consent is given by an adult other than the child's parent, that person should live, or appear to live, at the residence and have competent mental ability and language skills. The social worker must have a good faith belief that the person has authority to consent to entry. Consent must be given not only to enter the home but to see and speak with the child as well.

Social work staff will document the facts indicating that the person has the capability and authority to consent.

Consent may be actual (verbal) agreement or implied (nonverbal) agreement identified by the behavior (e.g., nodding, standing aside and waving the hand, etc.). Actual consent is typically given verbally by responding, "Yes, you may enter my home," for example. For implied consent, social work staff will ask a follow-up question to confirm the non-verbal response. There must be a behavioral gesture that can be documented as agreement. A parent's failure to object to entry is not sufficient documentation for implied consent.

A spouse/cohabitant may consent to entry even if the other spouse/cohabitant objects to the entry.

If the parent/guardian withdraws their consent after the social worker has entered the home, the social worker must leave.

Consent must be freely and voluntarily given. Consent obtained by duress, coercion, or force is not valid.

Per best practice, when a parent/guardian refuses entry, options to consider include the following:

1. Explain to the parent/guardian that CFS is required by law to investigate reports of suspected abuse or neglect pursuant to Welfare and Institutions Code (WIC) Section (§) 328 and, without their consent, must return with a Court home entry order served by law enforcement.
2. Ask to see the child from the doorway to help assess the urgency of the situation.
3. Ask to see and briefly interview the child outside the home.
4. Consider seeking a school interview warrant, if appropriate.
5. Request law enforcement's assistance. Law enforcement can determine whether the parent/guardian is on probation or parole and subject to a search and seizure order; they may also independently determine whether exigent circumstances exist to justify law enforcement entry and/or may also seek a search

warrant, if appropriate.

6. Assess whether exigent circumstances exist and can be documented to justify entry into the home without a warrant.
7. Consider filing a warrant to gain home entry.

**Note:** The social worker is not required to inform the parent of their right to refuse consent or their right to withdraw consent after initially granting it.

**B. Exigent Circumstances:**

A situation considered exigent must have information to indicate the child is in imminent danger of serious bodily harm and immediate action by the social worker is reasonably necessary to avert that specific injury. Exigency should be determined based on the totality of the information available.

Questions for assessment of exigency in situations may include, but are not be limited to:

1. Can imminent danger be specifically articulated and documented?
2. Is there information suggesting the child may suffer serious bodily harm in the time it would take to obtain a warrant?
3. Do observations at the door indicate signs of abuse that place the child at imminent risk?
4. Is the parent admitting abuse/neglect?
5. Is the parent/guardian under the influence of a controlled substance?
6. Is there a dangerous condition in the home that is evident and can be specifically documented (e.g., loaded weapons in reach of children, presence of drugs and/or paraphernalia, excessive garbage, or unsanitary conditions)?
7. Is there an articulable danger that the parent/guardian may abscond with the child?
8. Are there credible statements by the Reporting Party or

others (i.e., statements by neighbors, etc.) that indicate the child is in imminent danger?

9. Is the alleged abuse reported as happening only on certain dates or at certain times of the day?

Even when exigency has been established, if the parent, guardian, or other adult refuses entry into the home, the social worker will remain on scene (while ensuring the social worker's own safety) and contact law enforcement for assistance with home entry. If law enforcement is unable or unwilling to assist, the social worker will request a warrant.

If the social worker leaves the scene, then later decides to return and remove the child, exigent circumstances do not exist. A delay in response negates imminence.

**Note:** Per CFS policy, when a decision is made to take a child into protective custody without parental consent or a warrant, this decision must be approved by a Program Manager (PM) prior to detaining the child.

C. **Warrant:**

A warrant will be requested after it has been determined, in consultation with the assigned Senior Social Services Supervisor (SSSS) or designee, that neither consent nor exigent circumstances exist and that filing a Non-Detained Petition is not sufficiently expeditious to secure the child's safety.

*Application and Declaration in Support of Warrant (F063-25-589)* will be used to submit the request to Court. Attach exhibits when applicable (e.g., photos of injuries, dirty home environment, etc.). Refer to CFS P&P [County Issued Cell Phones \(B-0202\)](#) for guidelines on cell phone camera use.

1. During Business Hours: The assigned social worker or SSSS may consult with County Counsel by telephone and email. If a decision is made to request a warrant, the *Application and Declaration in Support of Warrant (F063-25-589)* will be:

- Completed and signed by the assigned social worker and SSSS
- Emailed to County Counsel (copy the Court Officer SSSS/designee) along with a copy of *Court Findings and Orders Authorizing Warrant*

(F063-25-590), for initial review and any necessary modification

County Counsel will review the warrant request and approve the document as to form. Once County Counsel has signed the *Application and Declaration in Support of Warrant (F063-25-589)*, County Counsel will alert the Court Officer SSSS/designee who will then file the *Application and Declaration in Support of Warrant (F063-25-589)* with the Juvenile Court Administration along with a copy of *Court Findings and Orders Authorizing Warrant (F063-25-590)*. The Juvenile Court Administration will deliver both documents to the designated Juvenile Court Judge.

Once the *Application and Declaration in Support of Warrant (F063-25-589)* has been submitted, the assigned social worker will remain available by phone to answer questions, and await instruction and/or a decision by the Judge.

When the warrant is granted or denied by the designated Juvenile Court Judge, the requesting social worker and SSSS will be notified by the Court Officer SSSS/designee. The Court Officer SSSS/designee will scan/email a copy of the signed *Court Findings and Orders Authorizing Warrant (F063-25-590)* and the *Application and Declaration in Support of Warrant (F063-25-589)* to the assigned social worker/SSSS.

2. After Business Hours: The cut off time for submission of protective custody warrant applications for execution on the same day is 3:30 PM, per Juvenile Court Administrative Order No. 12/009.

Consult with County Counsel to determine whether a warrant application may be submitted after 3:30p.m. when the warrant application is in process, but cannot be completed in time for submission by 3: 30p.m.

If proceeding, the *Application and Declaration in Support of Warrant (F063-25-589)* will be:

- Completed and signed by the assigned social worker and SSSS
- Emailed to County Counsel (copy the Court Officer SSSS/designee) along with a copy of

*Court Findings and Orders Authorizing Warrant (F063-25-590), for initial review and any necessary modification*

County Counsel will review the warrant request, sign, and approve the document as to form. The designated County Counsel will contact the Presiding Judge of the Juvenile Court or designated Juvenile Court Judge and arrange delivery by email. The designated County Counsel will also deliver a copy of *Court Findings and Orders Authorizing Warrant (F063-25-590)* for the Judge to complete.

Once the *Application and Declaration in Support of Warrant (F063-25-589)* has been submitted, the assigned social worker will remain available by phone to answer questions, and await instruction and/or a decision by the Judge.

3. Night Service: Protective custody warrants may be issued for immediate execution between the hours of 10:00 p.m. and 7:00 a.m. Pursuant to Penal Code (PC) §§ 840(4) and 1533 these warrant applications will outline good cause for night service and will be submitted using *Application and Declaration in Support of Warrant – Request for Night Service (F063-25-708)*.

The assigned social worker or SSSS will consult County Counsel by telephone and/or email to determine if night service (of warrant) is necessary. If proceeding, the *Application and Declaration in Support of Warrant – Request for Night Service (F063-25-708)* will be:

- Completed and signed by the assigned social worker and SSSS
- Emailed to County Counsel (copy the Court Officer SSSS/designee) along with a copy of *Court Findings and Orders Authorizing Warrant (F063-25-590)*, for initial review and any necessary modification

County Counsel will review the warrant request, sign, and approve the document as to form. The designated County Counsel will contact the Presiding Judge of the Juvenile Court or designated Juvenile Court Judge and arrange delivery by-email. The designated County Counsel will also deliver a copy of *Court Findings and*

*Orders Authorizing Warrant (F063-25-590)* for the Judge to complete.

Once the *Application and Declaration in Support of Warrant – Request for Night Service (F063-25-708)* has been submitted, the assigned social worker will remain available by phone to answer questions, and await instruction and/or a decision by the Judge.

Whether an after-hours/night service warrant is granted or denied, the Court Officer SSSS or designee will ensure a hard copy of the entire warrant is submitted to Juvenile Court the next business day and processed by Juvenile Court Administration.

For warrants granted by Court, the assigned social worker will contact the law enforcement officer and coordinate serving the warrant. The social worker will present the signed warrant to the officer who will serve the parent/guardian with the warrant.

Exceptions to contacting law enforcement for the purposes of serving a **protective custody** warrant will be made in consultation with a SSSS and Program Manager (PM) approval. Refer to the “Protective Custody Warrants” Policy section for further guidance.

For warrants denied by Court, the assigned social worker may consider, in consultation with the assigned SSSS, filing a Non-Detained Petition for the child, with PM approval.

**Note:** Per PC § 1534, warrants will be executed within 10 days after the date of issuance. After the expiration of 10 days, unless executed, the warrant is void and must be recalled. Refer to the “Service/Recall/Return of Warrants” Policy section for further information.

#### **Warrants— Other Issues**

For dependents placed in out-of-home care with a Resource Family, relative, Non-Relative Extended Family Member (NREFM), Foster Family Agency (FFA) home or licensed foster home, the warrant process may apply. The social worker will consult with County Counsel to determine action needed for the specific circumstances involved.

For dependents in the custody of their parent/guardian (Family Maintenance cases), the above policy applies.

For children voluntarily placed by their parents, the above policy applies. Refer to CFS P&P [Voluntary Placements \(K-0901\)](#).

#### **Failed CRISP**

If the parent(s)/guardian(s) do not follow the conditions of the

Conditional Release to Intensive Supervision Program (CRISP) Agreement, the assigned social worker will review the court orders and consult with County Counsel, as necessary, to determine the need for a protective custody warrant to re-detain the child/children.

**School  
Interviews—  
Abuse  
Investigations**

Per PC § 11174.3, CFS staff may interview children at school. When considering an interview of a child at school during child abuse investigations, social work staff will use the following guidelines:

**Immediate and 10 Day Response Referrals:**

- A. Response will be without law enforcement and per response timelines outlined in CFS P&P [Abuse Investigations—Practice Guidelines \(A-0412\)](#) (i.e., Immediately after assignment notification for Immediate Response Referrals and within 10 calendar days of the referral date for 10 Day Response Referrals).
- B. Prior to the interview, the child must be informed that he/she can:
  - Refuse to be interviewed
  - Stop the interview at any time
  - Request to have an adult school staff member present during the interview
- C. Periodically during the interview, the child will be reminded that he/she can refuse to be interviewed further.
- D. The school interview will be limited to 30 minutes in duration unless information gathered during the interview suggests imminent risk to the child and further questioning is necessary to make a determination.
- E. If information obtained indicates either the need to take the child into protective custody or the need for immediate medical care, school personnel will be notified that exigent circumstances exist. A contact with law enforcement to request assistance will follow.
- F. If not placing the child into protective custody and/or immediate medical concerns do not exist but information is gathered during the interview that suggests possible criminal conduct, staff will conclude the interview with the child, and then cross report the information to law enforcement. If law

enforcement responds to the school to interview the child, social work staff will not participate in the interview and will not be present in the room. Social work staff may later follow-up with law enforcement after law enforcement's interview concludes.

The above guidelines also apply to investigatory school interviews that take place at daycares, after school care, preschools, kindergartens, and private schools.

**Note:** When law enforcement is at a school and contacts CFS to request assistance, social work staff will respond but will not participate in the interview unless parental consent or exigency has been established.

**School  
Interviews—  
Other**

The above guidelines do not apply to school interviews of children who have been ordered detained by Juvenile Court or children who are currently Juvenile Court dependents.

For monthly contacts on non-court (voluntary) cases, staff will not conduct interviews at school without parental consent.

**Protective  
Custody  
Warrants**

Social work staff will request a protective custody warrant from Court when there is probable cause to believe the child is described in WIC § 300, when parents have abducted a court dependent, or when a dependent has run away from placement and whereabouts are unknown.

Pursuant to WIC § 340, the Court may issue a protective custody warrant if the Court finds probable cause to support all of the following:

- The child is a person described by WIC § 300
- There is substantial danger to the safety or physical/emotional health of the child
- There are no reasonable means to protect the child's safety or physical health without removal

Social work staff will follow the guidelines below when determining the need for a protective custody warrant.

A. **Non-dependents:**

When neither parental consent nor exigent circumstances exist, the social worker, in consultation with the SSSS or a designee, will assess the presence of risk and safety factors and the need to remove the child under non-exigent circumstances. Refer to CFS P&P [Structured Decision](#)

[Making \(D-0311\)](#) for further information on risk assessment.

If the assessment determines the child needs to be removed from the home, but exigent circumstances do not exist, staff will request a protective custody warrant.

Hospital holds and Non-Detained Petitions may require a warrant:

1. Hospital Holds: Social work staff will assess the unique circumstances of each referral to determine whether the child is a victim of abuse or neglect as described by WIC § 300 and if exigency exists. Consult with SSSS and/or Program Manager to determine if exigent circumstances exist.

**Note:** When a decision is made to take a child into protective custody without parental consent or a warrant, exigent circumstances must exist. Per CFS policy, the decision to place a child into protective custody under exigent circumstances must be approved by a PM prior to detaining the child.

A history of involvement with CFS alone does not demonstrate imminent risk unless a connection with current risk is established and documented.

Refer to CFS P&P [Abuse Investigations—Protective Interventions \(A-0414\)](#) for further information regarding hospital holds.

Per WIC § 305, social work staff may also consider requesting law enforcement response to detain a child in a hospital, when release to a parent poses an immediate danger to the child's health or safety.

2. Non-Detained Petitions/Removal from Only One Parent: When a decision is made to remove custody from one parent but leave the child in the care of the other parent, regardless of who has physical custody, a warrant is necessary absent parental consent or exigent circumstances.
3. Emergency Medical Care: When a decision is made to remove a child from the physical custody of a parent, and it is determined that the child may require emergency medical care due to a known serious medical condition, social work staff may

request that the Court authorize the child to receive emergency medical care at the time of the protective custody warrant request.

Upon obtaining Court authorization for emergency medical care on behalf of the child, social work staff will make reasonable efforts to obtain consent of, or to notify the parent prior to obtaining emergency medical care for the child. Refer to CFS P&P [Consent for Medical Care and Physical Examination](#) for further information on obtaining appropriate consent for a child to receive medical care.

**B. Dependents:**

When a dependent (or a child who has been taken into protective custody) has run away from placement, including OCFC, and whereabouts are unknown or when parents have abducted a dependent, the child's assigned social worker will request a protective custody warrant via an Ex Parte submitted along with a the *Protective Custody Warrant (Runaway/Missing Minor) (F063-25-701)* and *Declaration To Support Protective Custody Warrant (Runaway/Missing Minor) (F063-28-39)* attached and completed with as much information as available.

Prior to completing the Ex Parte, refer to CFS P&P [Missing/Runaway/AWOL \(K-0214\)](#) and/or CFS P&P [Child Abduction \(B-0119\)](#) for notification/reporting requirements when a child has run away from placement or has been abducted.

When completing the Ex Parte to request a protective custody warrant, the "Reason for Recommendation" section will include:

- Date when a Missing Person Report was filed with law enforcement
- Missing Person Report number
- Person who filed the Missing Person Report (e.g., social worker, foster parent, Family Maintenance [FM] parent)

The "Recommendation" section of the Ex Parte will include a request for a protective custody warrant and a request that any/all previous warrants in the system or not served will be recalled.

**Note:** If a dependent child under Family Maintenance (FM) runs away from the parent/guardian's home or is missing, refer to CFS P&P [Missing/Runaway/AWOL \(K-0214\)](#) for additional guidelines when completing the Ex Parte and request for a protective custody warrant.

The Ex Parte, *Protective Custody Warrant (Runaway/Missing Minor) (F063-25-701)*, and *Declaration to Support Protective Custody Warrant (Runaway/Missing Minor) (F063-28-39)* will be sent to Court Officers for processing and delivery to the assigned courtroom. The Court Officer will advise the assigned social worker as to whether the Judge orders or denies the request for a protective custody warrant. If ordered, Court will enter the protective custody warrant into the law enforcement system where it will remain until it is served or recalled.

For dependents in the custody of a parent/guardian when there is a new referral or a concern that would necessitate removal from the parent/guardian's care, the ER social worker (for referrals) or assigned social worker (when there is no new referral) will consider the need to request a protective custody warrant and/or the need to file a Supplemental or Subsequent Petition.

Refer to CFS P&Ps [Family Maintenance Six Month Review Report \(G-0315\)](#) and [Dependency Intake \(A-0502\)](#) for further information on filing petitions.

For protective custody warrants granted by Court, the assigned social worker will contact the law enforcement officer and coordinate serving the warrant. Exceptions to contacting law enforcement for the purposes of serving a protective custody warrant will be made in consultation with a SSSS and PM approval.

**Note:** If the assigned social worker serves the protective custody warrant without contacting law enforcement, the following information will be documented in CWS/CMS under the warrant section of the Investigative Narrative:

- Reason for the exception to contacting law enforcement
- SSSS consultation
- PM approval

**Note:** The assigned social worker should attempt to execute the protective custody warrant as soon as possible, and if at all

possible on the same day the warrant is authorized by the Court. Refer to the “Service/Recall/Return of Warrants” Policy section for additional guidance.

For protective custody warrants denied by Court, the assigned social worker should consider, in consultation with the assigned SSSS and PM approval, filing a Non-Detained Petition for the child.

**Investigatory  
Medical Exam  
Warrants**

Social work staff will only obtain an investigatory (evidentiary) medical exam of a child with:

- A. Parental consent.
- B. Exigent circumstances that demonstrate a medical emergency requiring immediate attention or a reasonable concern that material evidence might dissipate (e.g., sexual assault occurring within the previous 72 hours).  
–OR–
- C. A warrant for an investigatory medical exam for a child who has already been detained.

Without exigent circumstances or parental consent, parents must be notified and judicial approval granted before children are subjected to investigatory physical examinations. For court order requests, refer to the “Warrant” subheading under the Policy section above.

The authority of law enforcement to order an investigatory medical exam is not sufficient.

Refer to CFS P&P [Child Abuse Services Team \(CAST\) \(A-0401\)](#) for additional information on investigatory medical exams.

**Arrest  
Warrants**

Court may initiate their own action regarding warrants. Per WIC § 339, Court may issue a warrant of arrest for parents/guardians having custody of a child who is the subject of a petition on failure to appear or notice issues.

**SSSS  
Consultation**

During child abuse/neglect investigations, the assigned social worker will consult with a SSSS to determine the most appropriate action for the specific circumstances of the referral. Consultation should explore:

- A. Information available in order to assess if parental consent or exigent circumstances applies.
- B. Information contained in the Child Abuse Registry (CAR)

report.

- C. Appropriateness of filing a Non-Detained Petition.
- D. Use of Structured Decision Making (SDM) to facilitate assessment.
- E. Other information specific to the child's situation or the allegations.

Consider whether any reasonable social worker and SSSS assessing the same facts would likely come to the same conclusion.

**Collaboration  
with Law  
Enforcement**

The assigned social worker will determine if parental consent or exigent circumstances exist independently from law enforcement.

The social worker will receive consent directly from the parent. Authority from law enforcement alone is not sufficient in the following circumstances:

- when entering a home
- taking a child into protective custody
- initiating an investigatory medical examination

When the social worker has determined that exigent circumstances do not exist, but law enforcement decides to forcibly enter a home, the social worker will not enter the residence, and will remain outside to provide assistance upon request.

While law enforcement has statutory authority to take a child into protective custody, the social worker will conduct an independent assessment regarding the child's need to remain in protective custody.

**Service/  
Recall/Return  
of Warrants**

Per PC § 1534, once issued, warrants will be served, recalled, or returned within 10 days. No warrant will be left outstanding.

When the warrant is served to a parent/guardian, no further action is necessary.

When the warrant cannot be served, CFS staff will request it be recalled by Court or will return it. *Application to Recall/Return Warrant (F063-25-611)* will be used to submit the request to Court. The reason why the warrant was not served will be included with the request. The *Application to Recall/Return Warrant (F063-25-*

611) will be sent by email to the Court Officers SSSS or designee. The Court Officers SSSS or designee will submit the *Application to Recall/Return Warrant (F063-25-611)* to the Juvenile Court Administration.

**Exception:** Warrants requested for dependent runaway children will be recalled via the recommendation in the Court Return report or, as applicable, Ex Parte filed by the assigned social worker.

**Service/No  
Petition Filed**

Within 72 hours of serving any of the following warrants, Court will be notified when the investigation does not result in a filed petition:

- Entry into the home
- Protective custody
- Investigatory medical exam
- Investigatory school interview

*Notice of Intent Not to Commence Juvenile Court Proceedings Under WIC § 300 (F063-25-591)* will be completed with child's name, J/DP number (if any), and a signature/date of the assigned social worker and SSSS. If no J/DP number exists, the Case Number section will be left blank. The reason why a petition was not filed will be included with the *Notice of Intent Not to Commence Juvenile Court Proceedings*.

The *Notice of Intent Not to Commence Juvenile Court Proceedings Under WIC § 300 (F063-25-591)* will be sent by email to Court Officers SSSS or designee. The Court Officers SSSS or designee will submit the *Notice of Intent Not to Commence Juvenile Court Proceedings Under WIC § 300 (F063-25-591)* to the Juvenile Court Administration.

**Documentation**

If CFS staff become the subject of a civil lawsuit by a parent who claims unlawful entry or detention, the referral/case notes documenting consent, exigent circumstances, or use of a warrant will serve as critical evidence in defending the social worker's actions as well as the social worker's familiarity with this policy.

A. **Entry/Search:**

The child's referral/case file will contain documentation establishing how entry to the home was obtained. This may include:

1. Statements or behaviors giving or implying consent to enter, who gave consent, time of entry, and any witnesses to the consent.

2. Statements of consent to search the premises of the home and interview the child.
3. Exigent circumstances, if consent was not given.
4. Use of warrant process, if parents refused entry and exigent circumstances did not exist.

B. **Removal:**

The child's referral/case file will contain documentation establishing the assessment used to determine the need for removal. SDM tools will be used to articulate:

1. Safety threats to the child, why protective capacities and safety interventions were not effective and high level of risk that justify the warrant request.
2. Exigent circumstances, if warrant was not obtained.

C. **Investigative Medical Exam:**

The child's referral/case file will contain documentation establishing the reason that an evidentiary medical examination of the child was obtained:

1. Parental consent.
2. Court order.
3. Exigent circumstances (e.g., urgent medical condition requiring immediate attention or the need to preserve evidence of sexual assault occurring within the previous 72 hours).

D. **Court Reports:**

Document the authority of actions taken, if a court-ordered warrant was obtained.

The assigned social worker will include a copy of the warrant in the referral packet.

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## REFERENCES

### **Attachments and CWS/CMS Data Entry Standards**

Hyperlinks are provided below to access attachments to this P&P and any CWS/CMS Data Entry Standards that are referenced.

None.

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## Hyperlinks

Staff accessing this document by computer may create a direct connection to the following references by clicking on them.

- CFS P&P [Structured Decision Making \(D-0311\)](#)
  - CFS P&P [Abuse Investigations—Practice Guidelines \(A-0412\)](#)
  - CFS P&P [Family Maintenance Six Month Review Report \(G-0315\)](#)
  - CFS P&P [Dependency Intake \(A-0502\)](#)
  - CFS P&P [Child Abuse Services Team \(CAST\) \(A-0401\)](#)
  - CFS P&P [Missing/Runaway/AWOL \(K-0214\)](#)
  - [Juvenile Court Administrative Order No. 12/009](#)
  - CFS P&P [Abuse Investigations—Protective Interventions \(A-0414\)](#)
  - CFS P&P [Child Abduction \(B-0119\)](#)
  - CFS P&P [Consent for Medical Care and Physical Examination \(I-0206\)](#)
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**Other Sources** Other printed references include the following:

None.

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## FORMS

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**Online Forms** Forms listed below may be printed out and completed, or completed online, and may be accessed by clicking on the link provided.

| Form Name   | Form Number |
|---|-------------|
| <a href="#">Application and Declaration in Support of Warrant</a>                           | F063-25-589 |
| <a href="#">Court Findings and Orders Authorizing Warrant</a>                               | F063-25-590 |
| <a href="#">Notice of Intent Not to Commence Juvenile Court Proceedings Under WIC § 300</a> | F063-25-591 |
| <a href="#">Application to Recall/Return Warrant</a>  | F063-25-611 |
| <a href="#">Declaration to Support Protective Custody Warrant (Runaway/Missing Minor)</a>   | F063-28-39  |
| <a href="#">Protective Custody Warrant (Runaway/Missing Minor)</a>                          | F063-25-701 |
| <a href="#">Application and Declaration in Support of Warrant—Request for Night Service</a> | F063-25-708 |

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**Hard Copy Forms**

Forms that may be completed in hard copy (including multi-copy NCR forms) are listed below. ***For reference purposes only***, links are provided to view these hard copy forms, where available.

| Form Name | Form Number |
|-----------|-------------|
| None.     |             |

**CWS/CMS Forms**

Forms that may **only** be obtained in CWS/CMS are listed below. ***For reference purposes only***, links are provided to view these CWS/CMS forms, where available.

| Form Name | Form Number |
|-----------|-------------|
| None.     |             |

**Brochures**

Brochures to distribute in conjunction with this procedure include:

| Brochure Name | Brochure Number |
|---------------|-----------------|
| None.         |                 |

**LEGAL MANDATES**

[Welfare and Institutions Code \(WIC\) Section \(§\) 300](#) describes children who are subject to jurisdiction of the Juvenile Court.

[WIC § 328](#) directs social workers to immediately investigate a person believed to be described by WIC § 300 to determine whether child welfare services should be offered and whether proceedings in the Juvenile Court should be initiated. It also directs the social worker to interview any child four years of age or older that is the subject of an investigation.

[WIC § 305](#) lists the conditions that allow law enforcement to take a child into protective custody without a warrant, including when a child is hospitalized and release to a parent poses an immediate danger to the child's health or safety.

[WIC § 306](#) allows social workers, without a warrant, to take a child into protective custody who has been declared a dependent under WIC § 300 or a child who the social worker has reasonable cause to believe is a person described by WIC § 300(b) or (g) and has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety. Before removing the child, consideration will be given to whether the child can remain safely in the home with available services, referral to public assistance, or whether a non-offending caregiver can provide for and protect the child and whether the alleged perpetrator of abuse/neglect agrees to leave the residence.

[WIC § 324.5](#) authorizes consultation with medical practitioners who have specialized training in child abuse/neglect to determine whether a physical examination of the child is appropriate. If deemed appropriate, the physical examination will be done by a medical practitioner with specialized training in detecting and treating child abuse injuries and neglect. The exam will take place within 72 hours of protective custody, if possible.

[WIC § 339](#) gives Court authority to issue a warrant of arrest for a parent, guardian, or other person having custody of a child who is the subject of a dependency petition when they fail to appear after being served notice or when the Court cannot serve notice or believes notice will be ineffectual.

[WIC § 340](#) gives Court authority to issue protective custody warrants without filing a petition under WIC § 300 if the Court finds probable cause to support all of the following: the child is a person described by WIC § 300, there is a substantial danger to the safety or to the physical or emotional health of the child, and there are no reasonable means to protect the child's safety or physical health without removal. Whenever a petition has been filed on behalf of a minor, or a subsequent petition is filed on behalf of a minor and it appears to the court that the circumstances of the child's home environment may endanger his/her health, person, or welfare, or whenever a dependent child has run away from the court-ordered placement, a protective custody warrant may be issued immediately for the minor.

[Penal Code \(PC\) § 1523–1542](#) mandate reasons and procedure for issuing search warrants.

[PC § 11174.3](#) authorizes a suspected victim of child abuse/neglect to be interviewed during school hours, on school premises.

[California Department of Social Services Manual of Policies and Procedures, Division 31-135](#), requires social workers to ensure that authority exists prior to removing a child, either under temporary custody as specified in [WIC § 305–306](#) or a court order.

[U.S. Constitution, Amendment IV](#) protects individuals against unreasonable searches and seizures, and requires warrants to be issued, upon probable cause, supported by oath or affirmation, describing the place to be searched and the persons or things to be seized.

[U.S. Constitution, Amendment XIV](#) guarantees parents will not be separated from their children without due process of law.

[42 U.S. Code § 1983](#) mandates that persons, acting under authority of law, who deprives a citizen of rights secured by the Constitution and laws will be liable to the party injured.

*People v. Kimble* (1988) 44 Cal.3d 480, 494 provides that a warrant application must include some factual basis (i.e., good cause) for the conclusion that the greater

intrusiveness of a nighttime search is justified by the exigencies of the situation.

*City of Canton v. Harris*, (1989) 489 U.S. 378 a §1983 civil rights liability may attach to a municipality (i.e., the County) where the municipality's failure to train amounts to deliberate indifference to the constitutional rights of citizens.

*Calabretta v. Floyd* (1999) 189 F.3d 808 9<sup>th</sup> Cir. denied a social worker and law enforcement officer qualified immunity regarding their coerced entry into a home. The officer and social worker investigated suspected child abuse, interrogated, and strip searched a child without a search warrant and without exigent circumstances. The appellate court ruled that both government officials should have known these actions were unconstitutional.

*Wallis v. Spencer* (2000) 202 F.3d 1126 9<sup>th</sup> Cir. requires judicial approval and notification to parents before children are subjected to investigatory physical examinations unless a medical emergency exists, evidence will disappear before a warrant can be obtained, or parental consent is given.

*Mabe v. San Bernardino County* (2001) 237 F.3d 1101 9<sup>th</sup> Cir. found no basis for a warrantless entry and seizure of the child based on the information available to the social worker at the time. Four days lapsed between social worker interviews of the family and the removal of the child. Social workers who remove a child from the home without a warrant must have reasonable cause to believe the child is likely to experience serious bodily harm in the time that would be required to obtain a warrant.

*Moodian v. County of Alameda* (2002) 206 F.Supp.2d 1030 9<sup>th</sup> Cir. explained that 42 U.S.C. § 1983 creates a cause of action against any person who, acting under color of state law, deprives a person of her constitutional rights. The Fourth Amendment generally bans warrantless searches and seizures in a person's dwelling absent exigent circumstances. Applied to the family home, these constitutional principles mean that social workers "may remove a child from the custody of its parent without prior judicial authorization only if the information they possess at the time of the seizure is such as provides reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury." Unlike physical harm, such as a beating, which can have immediate and dire consequences, emotional harm by its nature does not carry the same immediacy. Because the Intake worker knew that the ER worker did not have a warrant to detain, the Intake worker's decision to maintain the children in protective custody did not qualify for absolute immunity under the quasi-prosecutorial function doctrine.

*Doe v. Lebbos* (2003) 348 F.3d 820 9<sup>th</sup> Cir. (overruled on other grounds in *Beltran v. Santa Clara County* [9<sup>th</sup> Cir. 2008] 514 F.3d 906) found that a social worker cannot obtain an investigatory medical examination of a suspected child abuse victim without parental consent, a court order, or exigent circumstances. Law enforcement placed a four-year-old child into protective custody based on suspicion of neglect by the father and the child's complaint of vaginal pain. A 300 petition was filed and the child was subsequently taken to the hospital eight days later for a sexual abuse exam. The

Court ruled that the father's Fourth and Fourteenth Amendment rights were violated in that although the child's medical condition needed prompt treatment, it was not an urgent problem requiring immediate attention and there was no risk of losing crucial evidence. However, the Court also found that the social worker's conduct was not unreasonable in that a petition had been filed alleging sexual abuse, the child was experiencing vaginal pain and discharge, and the social worker had construed the Court's inquiry about whether the child had received medical care as authorization to obtain the exam.

*Rogers v. County of San Joaquin* (2007) 487 F.3d 1288 9<sup>th</sup> Cir. found that social workers violate the Fourth and Fourteenth Amendment rights of parents and children if they remove a child from the home without information at the time of removal that establishes reasonable cause to believe the child is in imminent danger of serious bodily injury and the scope of the intrusion is reasonably necessary to avert that specific injury. Reasonable cause of serious bodily injury includes believing that the child would likely be beaten or molested during the time it would take to get a warrant. A social worker's prior willingness to leave a child in the home mitigates a finding of exigency, as does information that the abuse occurs only on certain dates or at certain times of day.

*Franet v. Alameda County* (2008) 291 Fed.Appx 32 9<sup>th</sup> Cir. found that social workers cannot remove children without a warrant except in emergency circumstances. It is proper for the jury to decide whether a reasonable social worker would have seized the children. When the County had seized 5,000 children without warrants during a period of a few years, a jury may decide whether the County had failed to train its social workers on what constituted an emergency and/or whether the county had an unconstitutional policy of seizing children.

*Dees v. County of San Diego* (2020) 960 F.3d 1145 9<sup>th</sup> Cir. found that substantial evidence supported the determination that the child was not seized by the social worker during the school interview. The Court held that the plaintiffs' allegation resulting from the child's 5-minute interview at school failed to establish a claim under the Fourth Amendment given that the mother never actually lost control over the child. The Court affirmed the district court's grant of a new trial on that claim.

*Mann v. County of San Diego* (2018) 907 F.3d 1154 9<sup>th</sup> Cir. found that the County violated the parents' Fourteenth Amendment substantive due process rights when it performed medical examinations without notifying the parents and without obtaining either the parents' consent or judicial authorization. The Court stated that in an emergency medical situation or when there is a reasonable concern that material physical evidence might dissipate, the County may proceed with medically necessary procedures without parental notice or consent. Neither exception applied in this case. The Court held that the County's failure to provide parental notice or to obtain consent violated the parents' Fourteenth Amendment rights and the constitutional rights of other Southern California parents whose children were subjected to similar medical examinations without due process. The Court further held that the County violated the children's Fourth Amendment rights by failing to obtain a warrant or to provide these constitutional safeguards before subjecting the children to these

invasive medical examinations.

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## **REVISION HISTORY**

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Since the Effective Date of this P&P, and prior to the Current Revision Date, the following revisions of this P&P were published:

March 3, 2010  
May 3, 2012  
November 26, 2012  
December 18, 2013  
October 1, 2014  
March 19, 2015  
December 18, 2018