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Administrative Directive

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To:	Commissioners of Social Services
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	December 12, 2006
Subject:	CPS Investigations with Multi-Disciplinary Teams/Law Enforcement, Chapter 494 of the Laws of 2006
Suggested Distribution:	Directors of Service Child Protective Services Supervisors
Contact Person(s):	See Page 7
Attachments:	No
Attachment Available Online:	n/a

I. Purpose

The purpose of this Administrative Directive is to advise local departments of social services (LDSS) of the provisions contained in Chapter 494 of the Laws of 2006 modifying sections 422 and 424 of the Social Services Law. The modifications pertain to providing notice of certain child protective services (CPS) reports to the appropriate law enforcement entity, and subsequently conducting a joint investigation with the multi-disciplinary team (MDT) or the appropriate law enforcement agency. Chapter 494 takes effect on December 14, 2006.

II. Background

LDSSs have historically partnered with law enforcement entities and any existing MDT in their county. CPS is required to provide to the district attorney telephone notice and copies of reports that involve the death of a child.

Moreover, any other type of report will be shared with the district attorney's office, if a prior request for those types of reports has been made.

Additionally, an LDSS is required to enter into a memorandum of understanding with its district attorney, and such memorandum is expected to address such issues as each entity's respective roles and responsibilities in relation to the investigation of CPS reports, communication issues during investigations, and communication with other law enforcement entities.

To date, the specific types of reports that generated notice to or joint investigation with an MDT or law enforcement agency was determined by counties based on the respective agencies' preferences, needs and resources.

III. Program Implications

Overview

Chapter 494 requires that CPS must give immediate telephone notice and forward immediately to the appropriate local law enforcement entity reports involving any of the following allegations:

- The death of a child
- Sexual abuse
- The infliction of, or allowing the infliction of, physical injury to a child by other than accidental means which causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ

In addition, under the following circumstance, CPS must make a timely assessment of whether to provide notice to the appropriate law enforcement entity (if CPS determines that such notice should be given, it shall provide immediate telephone notice and forward the report):

- A report of suspected maltreatment is made by a mandated reporter; and
- The report alleges physical harm; and
- There have been two or more reports that were indicated or are still under investigation within the previous six months involving the same child, a sibling, other children in the household, or the subject of the report

Note: For the purpose of determining whether there have been two or more such reports, duplicate reports are to be treated as one report. However, each separate intake report "consolidated" into one investigation stage will be counted individually for this purpose.

Initial Identification of the Target Reports

Chapter 494 requires the Statewide Central Register of Child Abuse and Maltreatment (SCR) to identify for the LDSS all the types of reports listed above (target reports). These reports will be identified in two different ways, depending upon the type of target report. First, any report received where it is alleged that one or more children have been abused is to be considered as potentially being a target report.

Second, for the remaining type of target report, where the report has been made by a mandated reporter, there is an allegation of physical harm and there have been two or more reports indicated/under investigation in the past six months, the reports will be identified by use of the “Special Handling” option at CPS Intake. “Law Enforcement” will be selected from the dropdown list, and these flagged reports will contain a “Y” in the “Special Handling” field that appears in both the printed Intake report and on the Case Summary window.

However, at least for the time being, there will be some over-identification of reports due to the identification methodology that is being employed:

- As stated above, all abuse reports transmitted must be reviewed by CPS as potential target reports, even those where a substantial risk of serious physical harm was created or allowed to be created, pursuant to Section 1012(e)(ii) of the Family Court Act, as opposed to having the serious physical harm having actually occurred; and
- In relation to the maltreatment report type listed above, the SCR will use select allegations as a surrogate for labeling a report as having allegations of “physical harm.” For reports containing the following allegation types, the SCR will designate them as “Law Enforcement” in the Special Handling field if there are two or more reports, regardless of the determination (including unfounded reports), within the previous six months:
 - Burns, Scalding
 - Choking/Twisting/Shaking
 - Fractures
 - Internal Injuries
 - Lacerations/Bruises/Welts
 - Malnutrition, Failure to Thrive
 - Poisoning/Noxious Substances
 - Swelling/Dislocation/Sprains

As a result, it may be necessary for the CPS supervisor and/or caseworker to be familiar with the Chapter 494 report types to determine if an abuse report meets the requirement for providing immediate notice to law enforcement, and whether reports designated as “Law Enforcement” in the Special Handling field need to be assessed to determine whether to provide immediate notice to law enforcement.

While Chapter 494 requires that certain actions be taken by CPS to involve law enforcement in certain types of reports, nothing in the new law precludes CPS from notifying law enforcement of any other type of report.

Joint Investigations

Once the target reports are identified by the SCR, local CPS assesses them and provides immediate telephone notice and forwards the appropriate reports to the appropriate law enforcement entity, Chapter 494 addresses the nature of the joint investigation:

- Investigations of the target reports should be conducted by an approved MDT, established pursuant to subdivision six of section four hundred and twenty three of the Social Service Law, if one exists.
- If no approved MDT exists, the target reports shall be jointly investigated by CPS and the appropriate local law enforcement entity.
- If an LDSS does not wish to provide notice to the appropriate local law enforcement entity concerning all the target reports and/or does not want to have all such reports investigated by the approved MDT or the appropriate local law enforcement entity, it must submit a protocol concerning how it plans to handle joint investigations between the LDSS and law enforcement to the appropriate OCFS Division of Development and Prevention Services (DDPS) Regional Office. OCFS must approve or disapprove the submitted protocol within thirty days. This protocol should be developed by the LDSS and the local law enforcement agency or agencies with which it works, and should address the areas discussed in the next subsection of this memorandum entitled “Protocol.”

Local CPS must determine, in consultation with the district attorney and relevant law enforcement officials, which is the “appropriate” law enforcement entity for any given report.

OCFS has sent to the New York State Division of Criminal Justice Services (DCJS) and the State Police information about Chapter 494, and has asked that the information be disseminated to local law enforcement entities.

OCFS has also asked that DCJS and the State Police disseminate information concerning Chapter 740 of the Laws of 2006, pertaining to the “CPS Warrants” legislation. A subsequent LCM will provide information on Chapter 740 of the Laws of 2006, which will become effective on January 18, 2007. Information on Chapter 740 is currently available on the OCFS Website at <http://www.ocfs.state.ny.us/main/legal/leg2006.asp>

Protocol

If an LDSS does not wish to provide notice to the appropriate law enforcement entity concerning all the target reports and/or does not want to have all such

reports investigated by the approved MDT or the appropriate local law enforcement entity, where no approved MDT exists, a protocol for how the targeted reports will be handled must be developed by the LDSS with the law enforcement entity(ies) with which it works. The protocol must be submitted to OCFS as soon as practicable, and OCFS must approve or disapprove the protocol within thirty days of submission.

Given the statutory intent of promoting closer collaboration between CPS and law enforcement on certain types of abuse and neglect reports, OCFS will look for the protocol to reflect some agreed upon cooperative working relationship between the entities. Specifically, the protocol should address the following:

- The types of reports that will be provided to local law enforcement;
- The method for providing information about the reports and/or the reports themselves to local law enforcement;
- What the law enforcement entity will do with the different categories of target reports (e.g., refer them to an MDT, address them through a joint investigation, or receive them for informational purposes);
- Categories of SCR reports that will be investigated by the MDT or through a joint investigation;
- Description of when and how information will be shared within the MDT or, for joint investigations, between CPS and law enforcement;
- For an MDT, a general description of how it is expected to function;
- For joint investigations, when and how CPS and law enforcement will work together; and
- For joint investigations, how CPS and law enforcement will work cooperatively, even when some of the work is not being done directly together.

Discussion

The provisions of Chapter 494 presume that for reports of suspected child abuse and serious maltreatment, the best course of action is to utilize an MDT. Use of the MDT will promote a comprehensive investigation approach, reduce the risk of additional trauma to the children, and facilitate the collection of evidence that might be necessary if criminal prosecution is determined to be warranted. Where there is no approved MDT, Chapter 494 requires that targeted reports be investigated jointly with law enforcement, unless there is an approved protocol as to how to handle such reports in an alternative manner.

Where no MDT exists, the LDSS may wish to consider establishing such a team. OCFS is able to provide technical assistance to communities wishing to form an MDT, and funding may be available. A Request for Proposals (RFP) is anticipated to be issued shortly, which will make funding available, on a competitive basis, for communities interested in establishing MDTs, child advocacy centers (CACs) and/or fatality review teams.

In collaborating with law enforcement on investigations of reports of suspected child abuse and serious maltreatment, as virtually all LDSSs have done in some manner for years, OCFS urges LDSSs to do as much advance communication as possible with its MDT and/or law enforcement partners concerning respective roles and responsibilities. While not every case circumstance can be foreseen, it is better to come to agreement about the entities' respective responsibilities, legal authority and limitations, and how and when information will be communicated.

In this context, it is important for the law enforcement partners to be aware of CPS's statutory obligation to act to protect children and, in some instances, plan for their immediate and long-term well-being in a permanent home. There have arisen instances in some counties where law enforcement has requested that CPS not make contact with family members for some period of time or limit its involvement in some other manner. The rationale for such requests has been concerns about evidence collection in relation to possible prosecution. Clearly, these are very legitimate concerns. However, CPS maintains its responsibility to facilitate child safety and reduction of risk of future abuse and maltreatment. Based on the specific circumstances of a particular situation, some way of proceeding that balances law enforcement's and CPS's responsibilities may need to be undertaken. To the extent that some of these types of situations can be discussed before they arise, and some general common understanding established, this may result in fewer case specific disagreements.

The importance of having discussions and arriving at a common understanding of roles and responsibilities is demonstrated by a recent court decision from the Appellate Division. In People v. Wilhelm, CPS workers who were part of an MDT spoke to a subject of a report who had been arrested and who had invoked the right to counsel, which precluded law enforcement staff from talking to the subject without the subject's counsel being present. The district attorney subsequently had the CPS workers testify in the criminal proceeding as to statements made by the subject during this interview. The court found that in that circumstance, the CPS workers were effectively agents of the police, and thus the statements made by the subject to the CPS workers outside the presence of counsel could not be used as evidence in the criminal case.

The Wilhelm decision has raised concerns in some districts about the viability of MDTs as an investigatory approach. The view of OCFS is that the decision does not invalidate the use of MDTs but does remind us that some care must be taken in how and when different members of the MDT interact with subjects of reports. The Wilhelm decision does not in any way impact on the primary functions of MDTs to provide for interdisciplinary input into investigation and decision-making in CPS cases and to avoid multiple interviews of children in difficult and sensitive cases. The Wilhelm decision addresses only interviews with subjects and essentially tells us that CPS workers are subject to some of the same strictures as the police when a subject of a report is also involved in the criminal justice system. The case does not suggest that the statement made by the subject to the CPS workers would be inadmissible in Family Court nor does it mean that the

statement made by the subject could not be used as the basis to indicate a report. The decision addresses solely the use in a criminal trial of statements made by a subject outside the presence of counsel after the right to counsel has attached. MDTs remain a viable and effective means of investigating CPS cases, and OCFS continues to encourage districts to explore this option on the local level.

IV. Contact Persons

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