

# Solano County Health & Social Services Department



Mental Health Services  
Public Health Services  
Substance Abuse Services  
Older & Disabled Adult Services

Eligibility Services  
Employment Services  
Children's Services  
Administrative Services

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September 11, 2009

Honorable Ramona Garrett  
Presiding Judge of the Superior Court  
Solano Superior Court  
600 Union Avenue  
Fairfield, CA 94533

Re: County Responses to FY2008/2009 Solano County Grand Jury Report titled  
"Solano County Health & Social Services Department/Child Abuse Reporting"

Dear Honorable Presiding Judge Garrett:

Solano County Health and Social Services wishes to thank the Grand Jury for its attention to Child Welfare Services. We appreciate the concerns of the community and the time and effort involved in making recommendations to improve our process.

## **BACKGROUND AND SUMMARY**

The Grand Jury Report focuses attention on the issue of submitting an individual's name for inclusion on the Child Abuse Central Index (CACI). The legislature created the CACI in order to protect children from exposure to individuals who might pose a risk to them. The Department of Justice (DOJ), which administers the CACI, provides information to employers as to whether an applicant's name appears on the index. The DOJ provides this information only to employers whose staff has extensive interaction with children such as schools, law enforcement agencies, child welfare agencies, foster home licensing agencies, and adoption agencies.

The Grand Jury raised concerns regarding the due process rights of individuals whose names appear on CACI. This same issue was addressed through the Gomez v. Saenz lawsuit. The Gomez lawsuit which originated in July 2004 and settled on October 9, 2007, addresses the rights of individuals whose names either are or will be listed on the CACI. Pursuant to the terms of the settlement agreement, effective March 1, 2008, individuals must be provided appropriate notice of their CACI listing as well as the right to appeal the listing of their name on the index. In addition, the settlement allows individuals who may not have received a notice of their right to appeal prior to March 1, 2008 to challenge their listing on the CACI.

The California State Department of Social Services issued regulations to counties as to how the settlement should be implemented creating a consistent statewide policy.

On March 1, 2008, Solano County implemented the process as outlined in the settlement and set forth in regulation by the California State Department of Social Services. Prior to the Gomez settlement, Child Welfare Services had its own administrative process for reviewing the documents when requested by individuals who became aware that his/her name had been sent to CACI. In that process, the review was conducted by the

supervisor involved in the case and the manager for that unit. The Deputy Director, who had no prior involvement in the case, would also review the documents to determine whether she concurred.

While the Gomez settlement and related regulations do not require this step, Solano County continues to offer the administrative review process involving the supervisor and manager as described above to individuals as a way to offer individuals an opportunity to resolve complaints without having to conduct a formal grievance hearing. There have been instances where this step has resulted in the complainant's desired change (i.e. a withdrawal of the individual's name from the CACI.) If the dispute cannot be resolved through this process, the complainant retains the right to a grievance hearing.

Currently, as set forth in the state regulations, Solano County offers a grievance hearing conducted by a retired annuitant with extensive Child Welfare experience who has completed state-provided training on how to conduct the hearings and who has had no involvement with the original investigation.

Solano County CWS began keeping records of requests for reviews in July, 2006. Since then, approximately 4% of those whose names have been listed with CACI have requested a review and/or a grievance hearing (22 out of the 541 names submitted). Of these 22 individuals, 5 requested to proceed to a grievance hearing, one of whom failed to appear for the scheduled hearing.

## **FINDINGS AND RECOMMENDATIONS**

**Finding 1** -- The procedure of placing an alleged offender's name on the Child Abuse Central Index prior to offender notification by mail may interfere with the offender's due process. Once the name is placed on the Child Abuse Central Index, it becomes difficult and costly to remove upon appeal.

**Response to Finding 1** – The Health and Social Services Department disagrees with this finding. Since March 1, 2008, Solano County has followed the procedure outlined in the Gomez settlement. The California Superior Court determined how due process should be offered and the resulting state regulations implement this on a consistent, statewide basis. The Department has been following and will continue to follow the regulations set forth by the California Department of Social Services and reaffirmed by the Superior Court.

**Recommendation 1** – Prior to Child Protective Services forwarding a name to the Department of Justice for placement on the Child Abuse Central Index, Child Protective Services should notify the alleged offender. In most cases, a person who is deemed to be a danger to children as a result of an Inconclusive or Substantiated finding should be given the opportunity to respond to Child Protective Services prior to their name being released to the Department of Justice.

**Response to Recommendation 1** – The Department already follows the protocol outlined above. This protocol has been implemented pursuant to State law and existing Department policy. As part of the investigation, every attempt is made to interview the alleged offender to fully complete the investigation. This also includes follow up contact to report the results of the investigation and to give verbal notice of the intent to list the individual's name with CACI.

**Finding 2** – Child Protective Services investigative reports of abuse may be modified, altered, or changed by management and supervisors. Findings, conclusions, or other important facts may be edited without documentation or attribution of the changes. This practice has been noted by this and previous Grand Juries.

**Response to Finding 2** – The Health and Social Services Department disagrees with this finding. Managers and supervisors have input into how investigations are conducted through the supervision process. Social Workers may be directed to complete additional tasks and/or their conclusions may be discussed as part of the supervision process. However, neither managers nor supervisors edit or change the report completed by the social worker without communicating the need for these changes to the worker, such as editing for grammar, punctuation, etc. (especially for reports going to the court). Allegation conclusions must be documented in the

statewide database (CWS/CMS) where any change to the conclusion is also documented, including who made the change and the rationale for the change, both of which are reviewed by the State.

**Recommendation 2** – Child Protective Services reports that are modified by managers and/or supervisors should be signed, dated and notated to identify the source of the changes and identify what has been altered, modified or edited. This documentation should take place whether the changes were orally transmitted to the Social Worker or written.

**Response to Recommendation 2** – The Department already follows the protocol outlined above. As stated previously, any changes made to the allegation conclusions are entered into the statewide software program (CWS/CMS), which displays the name of the person who made a change, when and for what reason.

**Finding 3** – Child Protective Services notifies offenders of their status and findings through first-class mail. Under certain circumstances, this may result in notification not being received and the offender not knowing that their name has been placed on the Child Abuse Central Index.

**Response to Finding 3** – The Health and Social Services Department agrees with the finding that the Department notifies offenders of their status and findings through first class mail.

**Recommendation 3** – Child Protective Services should notify the alleged offender the same way that Courts handle important notifications, through Certified Mail with Return Receipt. This will document receipt of notification, which is important because placement on the Child Abuse Central Index may have the consequences of impacting the life, income, family and employment of the individual.

**Response to Recommendation 3** – The recommendation will not be implemented because it is not warranted. The settlement of the Gomez lawsuit and the State regulations do not require this level of notification. Adopting this recommendation would cause the County to deviate from the consistent statewide policy.

**Finding 4** – There are indications that alleged offenders and other parties to an investigation may not have been interviewed by Child Protective Services staff before the offender's name has been placed on the Child Abuse Central Index. There appears to be a lack of realistic policy that covers situations where offenders are not available for interview. The lack of an interview may lead to an incomplete investigation.

**Response to Finding 4** - The Health and Social Services Department disagrees with this finding. While it is sometimes difficult to locate alleged offenders for an interview, particularly if the offender is not the child's parent, Departmental policy is that the most complete investigation possible is to be conducted.

**Recommendation 4** – Child Protective Services should develop a policy that addresses situations where parties to the allegation may not have been interviewed. When all parties are not interviewed, there should be collateral, objective evidence that supports the allegation of abuse in order to reach a conclusion that benefits the goal of Child Protective Services.

**Response to Recommendation 4** – The recommendation has been implemented and is already part of H&SS' current policies and procedures. Department protocol requires that every effort be made to interview all parties involved in a situation; if a CACI notice is sent without interviewing the alleged offender, the lack of interview and the reason are required to be noted on the form allowing DOJ to determine whether to add the name to the CACI. CWS already uses the "collateral evidence" standard as part of the investigation process. No social worker makes a determination of substantiated or unfounded without weighing all information objectively; however, some situations involving an incident between an adult and a child come down to the child's word against the adult's with no "objective evidence" available.

**Finding 5** – There is a fine line between Unfounded and Inconclusive determinations. An Inconclusive determination automatically places an alleged offender's name on the Child Abuse Central Index without conclusive evidence and a legal framework to ensure due process. This may give the appearance of "guilty until proven innocent," contrary to legal tradition.

**Response to Finding 5** – The Health and Social Services Department agrees with the finding that there is a fine line between the determinations. However, current practice is in accordance with State law and regulations which defines these terms.

**Recommendation 5** – Since the definition of “inconclusive” in the California Penal Code is broad enough to allow different interpretations, Solano County Child Protective Services should recommend that the category of Inconclusive be dropped as a determination of placement on the list, or modified to the point where there is an objective understanding of the justification for its utilization.

**Response to Recommendation 5** – The recommendation will not be implemented because the category and use of the Inconclusive determination is in accordance with State law and regulations.

**Finding 6** – Cases under appeal are reviewed by Child Protective Services managers and supervisors who have been involved in reviews of the original case. This can lead to accusations of a lack of objectivity in the appeal process.

**Response to Finding 6** - The Health and Social Services Department disagrees with this finding. Currently, an independent administrative review is offered that is not required as part of the Gomez process. The department has found these administrative reviews can sometimes resolve the dispute without requiring a formal appeal hearing. However, since March 1, 2008, cases under appeal must follow the Gomez requirements.

**Recommendation 6** – The Director of Solano County Health and Social Services should employ a retired annuitant on an ad hoc basis to act as an independent and unbiased reviewer of grieved cases to ensure objectivity of the process. Ideally, this person would have investigative experience, knowledge of juvenile law and the ability to consult with the Juvenile Court.

**Response to Recommendation 6** – The Department already follows the recommendation outlined above. The recommendation was implemented in March, 2008 pursuant to the terms of the Gomez settlement agreement.

**Finding 7** – The Director of Child Protective Services has compiled statistical data on appeals of investigative cases beginning July 2006. Analysis of this data provides an important measure of the quality of investigations completed by Social Workers and identifies areas of needed improvement.

**Response to Finding 7** – The Health and Social Services Department agrees with this finding.

**Recommendation 7** – Child Protective Services should continue collecting this data and act upon the findings.

**Response to Recommendation 7** – The recommendation has been implemented and the Department continues to collect and compile statistical data.

I trust the information provided adequately responds to the Grand Jury’s Findings and Recommendations.

Sincerely,

Patrick O. Duterte  
Director, Solano County Health & Social Services

Cc: Linda Orrante, Deputy Director Child Welfare Services  
Michael D. Johnson, County Administrator  
Board of Supervisors  
Grand Jury