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SENATE SELECT COMMITTEE ON
CHILDREN AND YOUTH
SENATOR ROBERT PRESLEY, CHAIRMAN

SB 1195 TASK FORCE

CHILD ABUSE REPORTING LAWS, JUVENILE COURT DEPENDENCY STATUTES, AND CHILD WELFARE SERVICES

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SENATE SELECT COMMITTEE ON CHILDREN & YOUTH/SB 1195 TASK FORCE

Child Abuse Reporting Laws, Juvenile Court Dependency Statutes, and Child Welfare Services

January, 1988

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TABLE OF CONTENTS

Page

Executive Summary..... i

Introduction..... 1

Part I: The New Legislation..... 3

SB 243 (Presley)..... 3
SB 834 (Preley)..... 12
SB 1219 (Presley)..... 14

Part II: Additional Recommendations/Unresolved Issues..... 17

Services Issues..... 17
Infants Born with AIDS..... 21
Special Needs Children..... 22
Party Status in Juvenile Court..... 23
Testimony of Children in Chambers..... 24
Incarcerated and Institutionalized Parents..... 25
Parental Rights When Children are in Long Term Out-of Home Placement..... 26
Child Welfare Services Information Concerns..... 26
Accountability for False Reports..... 30
Issues in Child Abuse Investigations on Federal Property..... 33

Conclusion..... 35

SENATE SELECT COMMITTEE ON CHILDREN & YOUTH/SB 1195 (Presley) TASK FORCE

Child Abuse Reporting Laws, Juvenile Court Dependency Statutes, and Child Welfare Services

EXECUTIVE SUMMARY

Senate Bill 1195 (Presley - Chapter 1122, Statutes of 1986) required the Senate Select Committee on Children and Youth to convene a task force which would make recommendations on how to bring greater coordination among child abuse reporting statutes, child welfare services, and juvenile court proceedings. The Legislature's charge to the task force was to examine existing statutes and practices and make recommendations for any changes needed to ensure maximum continuity of protection for children at risk of abuse, neglect, and exploitation. The results of the task force's work are contained in SB 243 (Presley - Chapter 1485, Statutes of 1987), SB 834 (Presley - Chapter 1310, Statutes of 1987), and SB 1219 (Presley - Chapter 1459, Statutes of 1987). This report documents the intent of these new laws and outlines the task force's additional recommendations.

Part I: The New Legislation

The task force began its work guided by the conviction that child abuse reporting standards must clearly define to the community and child protection agencies all instances where children are believed to be at risk of abuse or neglect. The task force recognized that these reporting standards must be broad in scope so that questionable situations will be reported and assessed. In this way, child protection officials have greater opportunity to intervene at an early point to protect at-risk children. To ensure the most effective reporting standards, the task force made recommended changes to existing child abuse reporting laws, primarily for purposes of clarification. These changes are contained in SB 1219 which:

° Clarifies that the reference to corporal punishment in the definition of child abuse is a reference to unlawful corporal punishment;

° clarifies that mutual affray between minors is not child abuse;

° supplements numerical cross reference to other code sections with more meaningful definitions;

° clarifies cross-reporting requirements among child protection agencies; and

° authorizes county welfare departments to determine if an immediate, in-person response to a child abuse report is necessary, based upon a professional assessment.

The task force then turned to the statutes which permit child protection agencies to bring a child to the attention of the juvenile court because the abuse or neglect cannot be remedied on a voluntary basis with the child's family. Because the entry of a child and his/her family into the dependency court system is a critical and imposing step, the task force sought to balance protections afforded to the family with the needs of the child and the ability of the family to protect the child from harm. The amended juvenile court law is represented in SB 243, which provides comprehensive guidelines to child welfare agencies in deciding when a child needs the protection of the court, and, once in the judicial system, in effectively reconstructing a safe environment in which an at-risk child may live.

The new jurisdictional standards represented in SB 243 (Welfare and Institutions Code Section 300 et seq.) were developed with the understanding that these statutes are the threshold for juvenile court intervention into families. Thus SB 243 replaces the current vague language of Welfare and Institutions Code Section 300 with ten specific grounds for declaring a child a dependent of the court:

° Physical abuse (serious physical harm);

° physical/medical neglect;

° serious emotional damage;

° sexual abuse;

° severe physical abuse or sexual abuse (maintains current language; extends application upward to children under the age of 5; no reunification services required);

° cruelty;

° parent convicted of causing the death of another child through abuse or neglect (no reunification services required);

° minor left without provision for support or care and supervision; and

° siblings abused or neglected.

SB 243 recognizes that once court intervention is determined necessary, children and parents should receive appropriate legal representation, time-limited and clearly focused protective and/or reunification services, and permanency planning at the earliest possible stage for those children who cannot live safely with their family.

Clearly, this increased focus on the risk to the child and the need for focused, time-limited service delivery requires greater sophistication and training on the part of child protection agencies and mandated reporters. Therefore, the task force developed SB 834 to initiate a statewide curriculum and training program focused on assessment of child abuse and neglect. This training is to be available prior to implementation of SB 243 and will provide professional tools for timely and accurate assessment of children at risk.

* * *

In short, the task force accomplished its charge to bring coordination among the child abuse reporting statutes, child welfare services, and dependency court proceedings by:

° Broadly and clearly defining child abuse reporting standards (SB 1219);

° outlining jurisdictional grounds for dependency to clarify areas of uncertainty and enhance the court's ability to protect abused and neglected children (SB 243); and

° initiating a training program so that child protection professionals can further increase their skills of assessment, service planning and permanent placement (SB 834).

Part II: Additional Recommendations/Unresolved Issues

While the changes incorporated in SB 243, SB 834, and SB 1219 are comprehensive in scope, the task force uncovered numerous other problems in child welfare matters for which it was felt additional legislation would be necessary or for which remedies were not immediately apparent. Among the issues is the ongoing need for adequate services to meet the needs of at-risk families, especially services which are targeted at the prevention of abuse or neglect, as well as services to meet the needs of minors who will no longer be eligible for juvenile court adjudication effective January 1, 1990. Other issues relate to juvenile court procedures, the growing number of special needs children for whom dependency procedures may be inappropriate or inadequate (infants born with AIDS), the need for additional child welfare services data collection, the special circumstances relating to incarcerated or institutionalized parents of dependent children, accountability for false child abuse reporting, and others. Therefore, the task force makes the following recommendations:

° There should be a comprehensive review of available services to prevent the need for juvenile court intervention in child abuse and neglect cases, together with a review of the need for additional preventive and placement services, by an oversight body such as the Auditor General or the Legislative Analyst;

° after the identification of necessary preventive and placement services, an evaluation should be undertaken to determine whether these services should be delivered through the Child Welfare Services system, or whether another system would be more appropriate. The evaluation should address how the services should be funded;

° a new permanent placement option should be developed for special needs children who cannot be reunified with their families which would ultimately allow more of such children to be adopted;

° issues relating to entry into the dependency system, family reunification, foster care placement, and permanency planning for infants and children with AIDS cannot be resolved under the current Child Welfare Services system. The Legislature should convene representatives of the public and private health sectors and child welfare services to address these issues;

° legislative clarification is needed to refine the standing and rights of individuals seeking to participate in juvenile court dependency proceedings;

° legislative clarification is needed regarding procedures for taking a child's testimony in chambers. The task force recommends that the Child Victim/Witness Judicial Advisory Committee examine this matter;

° current requirements regarding reunification services for incarcerated or institutionalized parents of dependent children are in need of clarification. However, the task force recommends that additional information must be gathered before policy decisions are made, such as statistical information regarding numbers of such children in foster care, practices and procedures utilized by counties for notifying incarcerated/institutionalized parents of court proceedings, and recidivism rates of parents with custody of children;

° a statewide, automated system for gathering and processing county Child Welfare Services data must be developed;

° resolution of conflicting state and federal requirements relating to confidentiality and other matters is necessary to ensure cooperation between county welfare departments and military personnel when child abuse or neglect is alleged to have occurred on federal military installations;

° the task force also discussed the issue of ensuring accountability for individuals who knowingly make false reports of child abuse or neglect or who make such reports with reckless disregard for the truth. However, the task force was unable to suggest any legislative remedies beyond the civil remedies currently provided for in statute and the proposal which is currently pending in SB 1461.

* * *

In summary, the report recommends that a major legislative priority should be the developing of means to ensure the funding and provision of public and private services:

° To alleviate family crises which threaten the well being of children;

° to prevent the breakup of families; and

° to reunify families when children must be removed for their safety.

INTRODUCTION

Senate Bill 1195 (Presley - Chapter 1122, Statutes of 1986) required the Senate Select Committee on Children and Youth to convene a task force which would make recommendations on how to bring greater coordination among child abuse reporting statutes, child welfare services, and juvenile court dependency proceedings. The Legislature's charge to the task force was to examine existing statutes and practices and make recommendations for any changes in order to ensure maximum continuity of protection for children at risk of abuse, neglect and exploitation. The results of the task force's work are contained in SB 243 (Presley - Chapter 1485, Statutes of 1987), SB 834 (Presley - Chapter 1310, Statutes of 1987), and SB 1219 (Presley-Chapter 1459, Statutes of 1987). The purpose of this report is to document the intent of these new laws and to outline the task force's additional recommendations.

Task force members came from several disciplines and often represented varying positions within a single discipline. They included state and county social service agencies, the Attorney General's Office, parents' and children's advocates (from both the legal and social policy fields), a dependency court representative, and a mental health practitioner. In addition, the task force received testimony as well as numerous documents from many individuals and concerned groups regarding child welfare policy and practice.

The task force began its work guided by the conviction that child abuse reporting standards must clearly define to the community and child protection agencies all instances where children are believed to be at risk of child abuse or neglect. The task force recognized that these reporting standards must be broad in scope so that questionable situations will be reported and assessed. In this way, child protection officials have greater opportunity to intervene at an early point to protect at-risk children. To ensure the most effective reporting standards, the task force made recommended changes to existing child abuse reporting laws, primarily for purposes of clarification. These changes are contained in SB 1219.

The task force then turned to the statutes which permit child protection agencies to bring a child to the attention of the juvenile court because the abuse or neglect cannot be remedied on a voluntary basis with the child's family. Because the entry of a child and his/her family into the dependency court system is a critical and imposing step, the task force sought to balance protections afforded to the family with the needs of the child and the ability of the family to protect the child from harm. The amended juvenile court law is represented in SB 243, which provides comprehensive guidelines to child welfare agencies in

once in the judicial system, in effectively reconstructing a safe environment in which an at-risk child may live.

The new jurisdictional standards represented in SB 243 (Welfare and Institutions Code Section 300 et seq.) were developed with the understanding that these statutes are the threshold for juvenile court intervention into families. The standards for reporting child abuse and neglect as contained in Penal Code Section 11165 et seq., and the standards for assessment and voluntary services to families with children at risk, remain broad, thereby permitting the opportunity for evaluation and, when appropriate, providing services which help to reduce risk and increase safety for the child. But, when the family cannot provide protection, the court is asked to assume the role of substitute parent -- a critical intervention into the normal role of the family. When this happens, the description of harm to the child must be clearly articulated so that all involved parties understand the problems and what must change if the family is to function on its own again.

SB 243 recognizes that once court intervention is determined necessary, children and parents should receive appropriate legal representation, time-limited and clearly focused protective and/or reunification services, and permanency planning at the earliest possible stage for those children who cannot live safely with their family.

Clearly, this increased focus on the risk to the child and the need for focused, time-limited service delivery requires greater sophistication and training on the part of child protection agencies and mandated reporters. Therefore, the task force developed SB 834 to initiate a statewide curriculum and training program focused on assessment of child abuse and neglect. This training is to be available prior to implementation of SB 243 and will provide professional tools for timely and accurate assessment of children at risk.

In short, the task force accomplished its charge to bring coordination among the child abuse reporting statutes, child welfare services, and dependency court proceedings by:

° Broadly and clearly defining child abuse reporting standards (SB 1219);

° outlining jurisdictional grounds for dependency to clarify areas of uncertainty and enhance the court's ability to protect abused and neglected children (SB 243); and

° initiating a training program so that child protection professionals can further increase their skills of assessment, service planning and permanent placement (SB 834).

A more detailed account of each of these bills is presented below (Part I). Following this description, this report then examines the task force's additional recommendations (Part II).

PART I: THE NEW LEGISLATION

SB 243 (Presley)

Changes to WIC Section 300. Senate Bill 243 substantially changes the definitions of abuse and neglect contained in Welfare and Institutions Code Section (WIC) 300. These changes were the most controversial aspects of the legislation. Some individuals believed that no changes should have been made; others objected to the wording of specific subsections. It should be noted that the changes in Section 300 affect only court jurisdiction; SB 243 does not alter the definitions contained in the child abuse reporting law (contained in Penal Code Section 11165 et seq.). Thus, there should not be any decline as a result of SB 243 in the number or kinds of cases which must be reported to and investigated by child protective service agencies (CPS). Nor will there be a change in the types of cases eligible for voluntary services pursuant to Welfare and Institutions Code Section 330.

Specific versus General Language. The reason for revising Welfare and Institutions Code Section 300 is to provide more clear-cut guidance to social workers and judges regarding the types of situations which the Legislature considers abusive or neglectful. The task force determined that greater specificity was needed in order to ensure more uniform application of the law throughout the state and to ensure that court intervention does not occur in situations the Legislature would deem inappropriate.

The language of the prior Section 300 is extremely broad and vague. Court jurisdiction is authorized if a minor is "in need of proper and effective parental care," "not provided with the necessities of life" or a "suitable place of abode," or whose "home is...unfit...by reason of neglect...or physical abuse." No definitions are provided for "abuse," "neglect," "suitable," "proper." SB 243 provides definitions of these terms, definitions which focus on more specific harms to a child's physical well being, emotional development or physical safety.

The revisions to WIC Section 300 reflect the belief that while children should be protected from a wide range of harms, inappropriate intervention can be harmful to children and parents. Investigations and court hearings are traumatic for parents and children, particularly in cases where children are removed from their homes during the investigation process. Children can suffer real emotional damage. Vague statutes make

inappropriate intervention more likely. Given the enormous variation in background, training and experience of child welfare workers and police, vague standards lead to highly variable practices in different counties and even within counties. While task force members believed that, under current law, most cases which are brought to court do require court involvement, a review of court petitions indicated that in every county at least some cases appeared not to belong in the dependency system.

Legislative guidance on the meaning of abuse and neglect is also necessary because the concepts of abuse and neglect involve value judgments about what constitutes proper parenting. There are also varying perspectives on the degree of supervision needed by children of different ages and what constitutes an unsafe home environment. The fact that there was substantial disagreement over specific definitions among members of the task force and among many of the individuals and groups participating in the Legislature's hearings demonstrates the need for legislative guidance. All of the participants in the process, like the protective service workers and police officers who must enforce the law, were concerned with protecting children. Yet they had different visions of who needs protection, as well as how such protection should be provided. Because a decision to bring a family into the court process has such enormous consequences on the children and parents, resolution of these value conflicts and differences in professional judgment, should not be left to the many individual workers. SB 243 reflects the task force's belief that these judgments should be made within the context of clear legislative guidelines.

Finally, the task force believed that defining the types of harms which justify intervention will result in more effective utilization of resources. It must be stressed that the specific language was not adopted to address a problem of limited resources, but was designed to cover those situations where authoritative intervention is appropriate to protect children. However, in the task force's view, broad court jurisdiction should not be thought of as a panacea for an adequate, comprehensive system of services for the varying needs of children and families.

Specific grounds adopted. The question of whether the particular definitions of harms provided in SB 243 are too narrow or too broad is separate from the question of whether the law should be left vague or made more specific. Many definitions are possible. The task force spent a great deal of time on the wording of each section and several legislative committees reviewed the specific language in lengthy hearings.

In arriving at definitions, the task force was concerned with identifying situations where intervention is reasonably

necessary. When children are threatened with serious harm, intervention obviously is needed. However, intervention into a family situation is a difficult task. Sensitively done it can be very beneficial; done poorly or inadequately, it may worsen, rather than improve a parent's function. Thus the benefits of court intervention must be carefully balanced with potential harm in arriving at definitions of abuse and neglect.

Underlying SB 243 is the judgment that court intervention is not appropriate unless there is good reason to believe that the parent's conduct towards the minor constitutes a significant threat to the minor's physical or emotional well being. The harm must be reasonably "serious." Although the legislation defines the harms more specifically than current law, it is not possible to give a highly specific definition of the phrase "serious" without being too restrictive. The legislation is intended to convey the judgment that court intervention is not appropriate just because a social worker, teacher or child welfare professional thinks that a parent's behavior is somewhat undesirable or may pose some detriment to the child.

Thus again, SB 243 reflects value judgments regarding the types of harms that justify court intervention. While the task force believed that these judgments are reflective, for the most part, of the values that currently guide most county agencies, the legislation should lead some agencies not to file petitions in some cases which they now inappropriately bring to court.

Turning to the specific provisions of WIC Section 300, SB 243 does not change existing definitions of sexual abuse or emotional harm. All instances of sexual behavior between an adult and child are covered. In instances where the intervention is based solely on emotional damage, the legislation requires that there be clear evidence that the child's functioning is impaired as the result of the parent's conduct.

SB 243 potentially expands the scope of intervention with regard to siblings of children who have been abused. It clarifies that such siblings are within the jurisdiction of the court if there is evidence that the siblings are at risk of being abused. However, SB 243 also makes it clear that there must be specific reasons to believe that the siblings are threatened with harm; thus, it specifies some of the factors that should be considered in making this determination.

With regard to "neglect," the most general basis and most common reason for intervention, the legislation specifies that the focus of intervention should be on possible physical harm to the child. This harm can result from a dangerous physical environment, failure to adequately supervise the child, or a failure to provide adequate food, clothing or medical care. The critical

factor is that there must be reference to specific harms the child has suffered or is likely to suffer.

Perhaps the most controversial part of the legislation is the definition of physical abuse. Under SB 243, WIC Section 300(a) specifies that in order for a court to assume jurisdiction, it must find that a child has been injured by a parent or that the child is at "substantial risk" of injury, and that the injury was "serious" or was inflicted in such a manner that might have been serious. Serious physical harm obviously includes such things as broken bones, burns, facial or head injuries, injuries to internal organs, or injuries to substantial portions of the body. It also includes any injuries to very young children. Where less serious injuries, for example bruises on the arms or backs of legs, are inflicted in a manner that might have caused more serious injury, court jurisdiction is authorized as well. Further, court jurisdiction for such inappropriate actions as kicking, punching, or choking a child, or the infliction of injury to a child with an instrument, is intended to be covered by the language.

The legislation specifies that corporal punishment ("spanking") of a child is not, in and of itself, grounds for intervention. This is consistent with existing case law, although the vagueness of Section 300 has resulted in some such cases being brought to court. Neither California, nor any other state, forbids corporal punishment by parents. By making this clear to police and child welfare workers, the legislation does not express approval of such punishment. It merely states that such action is neither illegal nor, in and of itself, abusive. It must be recognized that all instances of physical punishment which lead to bruising or any evidence of injury still must be reported to child protective service agencies and investigated by workers. In cases of minor bruising the worker will have to determine if more serious injury is likely to occur. The task force strongly supports development of voluntary services to help parents develop alternative means of discipline.

Finally, appropriate deference has been allowed for parents' preference for spiritual treatment of medical or mental health problems, provided there is no danger of serious physical harm or illness or serious emotional damage.

In total, WIC Section 300 contains ten specific grounds for dependency:

- Physical abuse (serious physical harm);
- physical/ medical neglect;
- serious emotional damage;

° sexual abuse;

° severe physical or sexual abuse (applies to minors under the age of 5; no reunification services required);

° cruelty;

° parent convicted of causing the death of another child through abuse or neglect (no reunification services required);

° minor left without provision for support or care and supervision;

° siblings abused or neglected.

Additionally, incorporated in the new Section 300 is a statement of the Legislature's intent "to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm." The intent paragraph also emphasizes the "focus on the preservation of the family whenever possible" and provision for the "full array of social and health services to the child and family," including voluntary services. This statement of intent is consistent with existing Child Welfare Services law.

It should be noted that SB 243 includes two, successive versions of WIC Section 300 which are identical except for one phrase in subsection (b) -- "...or inability," and one phrase in subsection (c) -- "...or who has no parent or guardian capable of providing appropriate care." The version containing these phrases is effective only from January 1, 1989 to December 31, 1989. It is included so that certain classes of minors who are currently served by the child welfare system will continue to be served until agencies more appropriately equipped to handle these classes of minors are able to develop alternative systems for them. Specifically, mentally ill minors, medically fragile infants, and so-called "status offenders" (runaway, truant or incorrigible minors), effective January 1, 1990, will no longer be eligible for adjudication and will not be served by child welfare services and the juvenile courts unless their condition is the result of their parents' behavior. Absent parental abuse or neglect, these children are not well served by the child welfare system. In particular, mentally ill minors should be treated and served by the mental health system which is staffed with professionals trained to meet the needs of these children. Nor should parents of mentally ill minors be subjected to the juvenile court's intervention, which generally implies parental unfitness.

The delay in implementation is designed to allow ample time to train child protective service workers in the significant changes made to the Welfare & Institutions Code (see SB 834), as well as to develop alternative programs for minors who will no longer be subject to juvenile court adjudication. SB 243 further mandates the Health and Welfare Agency to prepare recommendations for new programs to be implemented by January 1, 1990, including appropriate funding sources and service delivery systems. These recommendations are to be submitted to the Legislature by January 1, 1989.

Other Changes to Dependency Law. SB 243 brings all matters relating to a dependent child, including custody issues, within the jurisdiction of the juvenile court [WIC Sections 301(a) and (c) and 304]. WIC Section 301 also provides for notice to the parents or guardians of all court proceedings and specifically provides that copies of probation reports must be served personally, or by mail, on the parents or guardians.

More precise guidelines are set forth for police officers and social workers regarding temporary detention of minors (WIC Sections 305 and 306). In addition to the requirement of reasonable cause to believe a minor comes within the definitions in WIC Section 300, WIC Section 305 now requires a police officer to determine that there is immediate danger to the minor to justify the detention, or that the minor is in immediate need of medical care. A provision has been added to prevent release of a minor from a hospital if the release "poses an immediate danger to the child's health or safety." These guidelines are consistent with those adopted and utilized by the Commission on Peace Officers Standards and Training (POST).*

As in present law, a social worker may take a minor into custody who is a dependent child, or if there is reasonable cause to believe the child is described under WIC Section 300(b) or (g) (neglected, mistreated or abandoned) and is in immediate need of

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* The task force understands that some uncertainty and confusion exists within the law enforcement community on the interpretation of the new WIC 305 language (also WIC 306). The concern is that the wording might be interpreted in a way to preclude an officer from taking into custody a child who has not been abused prior to law enforcement intervention, but who nevertheless is in current danger of abuse. To ensure that all children are protected, it is recommended that urgency legislation be introduced to remove the term "continued" in WIC 305 and 306 and resolve possible misinterpretation on this section in SB 243.

medical care or is in immediate danger of continued abuse, or the physical environment poses a threat to the safety of the child. The new WIC Section 306 requires an assessment of reasonable services which, if provided, would eliminate the need for removal of the minor. The social worker must specifically determine if a referral to public assistance would avoid the need for removal. Available services must be utilized to prevent detention. (See also WIC Section 319). The changes to WIC Section 306 do not become effective until January 1, 1989, in concert with WIC Section 300.

Some modifications have been made to the requirements of existing law dealing with the notification of parents of detained children. County welfare departments must make a diligent effort to ensure regular telephone contact between parent and child prior to the detention hearing, unless deemed detrimental to the child [Section 308(a)]. The right to make a telephone call has been clarified to apply to children aged 10 and older. Other children retain their right to a facilitated telephone call.

A new WIC Section 318, effective from January 1, 1988 to December 31, 1988, replaces the present Section 318. It adds new responsibilities for appointed counsel in dependency proceedings and clarifies the responsibility of the court to determine if a conflict of interest exists between a dependent minor and the petitioning agency, or other public or private counsel. Counsel's responsibilities when appointed to represent a minor are specifically set forth, including a mandate for a personal interview of all minors four (4) years of age or older.

Effective January 1, 1989, the provisions of WIC Section 318 are incorporated into a new WIC Section 317, which also defines the court's responsibility for providing counsel to parents and guardians. Barring an intelligent waiver, appointed counsel for indigent parents is mandated if their dependent minor has been or may be placed out of home on the recommendation of the petitioning agency. Representation by appointed counsel for minors as well as parents shall be continuing ("vertical representation") and include proceedings to terminate parental rights or to institute or set aside legal guardianship. The changes are delayed in implementation in order to allow counties adequate time to reorganize staff and to secure adequate funding, pursuant to SB 709 (Chapter 1211, Statutes of 1987) to cover any additional costs attributable to the changes contained in SB 243.

When considering the detention of a minor, a new WIC Section 319 mandates the court to "make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal" from the home and specifies a list of services to be considered in making that determination.

Other significant additions and changes contained in SB 243 are as follows:

° Deletes from WIC Section 319(c) the inappropriate reference to "violation" of a juvenile court order when considering whether a minor should continue to be detained out of the parent or guardian's home;

° lowers the age in WIC Section 335 for service of the petition on a minor from age 14 or more to age 10 or more;

° adds WIC Section 342 to require the filing of a subsequent petition whenever new facts indicate reasonable cause to believe a minor who is already adjudicated under Section 300 may also fall within the description of another subsection of Section 300;

° adds a provision to WIC Section 350 to enable the court to make a finding that the probation department has not met its burden of proof at any court hearing regarding dependency;

° corrects WIC Section 355 to require the court to interpose objections on behalf of an unrepresented "parent or guardian" instead of "minor"; and

° makes technical changes to many other sections, including the combining of present WIC Sections 355.1 through 355.7 into one new WIC Section 355.1.

New Procedure for Terminating Parental Rights. SB 243 substantially modifies the procedure for permanently severing parental rights in cases where the child is a dependent of the court. The new procedure will apply to minors adjudicated dependents of the court on or after January 1, 1989. Unlike current practice, which requires the filing and prosecution of a separate civil court action pursuant to Civil Code Section 232, all termination proceedings for children who are dependents will be heard in the juvenile court, as part of the regular review process. The task force reasoned that by eliminating the need to file the separate Civil Code Section 232 action, minors who are adoptable will no longer have to wait months and often years for the opportunity to be placed with an appropriate family on a permanent basis.

Under the new provisions, a juvenile court must hold a "permanency" hearing within 120 days of the time it decides that no further reunification services shall be provided to the parents. The procedures are specified in WIC Section 366.26. While the permanency hearing may be ordered following the initial dispositional hearing, pursuant to WIC Section 361.5(b), the six month review, pursuant to WIC Section 366.21(e), or the twelve month review, pursuant to WIC Section 366.21(g), it must be held

within eighteen months of the time the minor was first removed from the parent's custody, pursuant to WIC Section 366.22. At the permanency hearing the court has only three options: Termination leading to adoption, guardianship, or long term foster care. The Court is to choose the disposition best for the child; however, as under present law, adoption is the preferred disposition, long term foster care the least preferred.

The critical substantive change is that in order to terminate parental rights the court need make only two findings: (a) That there is clear and convincing evidence that it is likely that the minor will be adopted; and (b) that there has been a previous determination (at the dispositional or six, twelve or eighteen month hearing) that reunification services shall not be offered. In essence, the critical decision regarding parental rights will be made at the dispositional or review hearing, that is, that the minor cannot be returned home and that reunification efforts should not be pursued. In such cases, the decision to terminate parental rights will be relatively automatic if the minor is going to be adopted.

Termination would not be permissible, however, in the following situations:

a) Termination would be detrimental to the child due to the strength of the parent-child relationship. There is substantial clinical evidence that some children in foster care retain very strong ties to their biological parents. Since termination in such situations is likely to be harmful to the child, courts should retain parental ties if desired by both the parents and the child;

b) an older child objects to termination. In these cases adoption is unlikely to be successful;

c) children in residential facilities. When a child is in a residential treatment facility, termination generally is not needed to ensure a stable placement or to prevent breaking any new attachments the child forms. Moreover, terminating parental rights might result in leaving a child without any parents if another permanent home cannot be found when he or she is ready to leave the residential treatment facility. Even if reunion with the parents is unlikely, and the parents visit only sporadically, it is preferable to encourage them to visit and maintain ties with the child, since the child may derive psychological benefit from knowing he or she does in fact have parents. Termination would be allowed, however, if the child should not be returned to the parents after residential care and there is another long term family placement available;

d) children placed with relatives who are willing to provide permanent care but do not wish to adopt. It is common practice to place children with relatives. When a child is placed with a relative, termination is both unnecessary and unwise unless the relative wishes to adopt the child or is unwilling to provide long term care. As long as the relative is willing to provide long term care, the child's needs for stability and attachment are satisfied.

In designing the new juvenile court termination procedure, it was the intent of the task force to eliminate duplication between the regular review hearings and the termination hearing. Therefore, the decisions made at the review hearing regarding reunification are not subject to relitigation at the termination hearing. This hearing determines only the type of permanent home.

The new WIC Section 366.26 also requires the court to consider appointment of counsel for parents or minors who do not have retained or appointed counsel. The same counsel shall not represent both the minor and his or her parent. If the minor's testimony is required, current language found in WIC Section 350 and Civil Code Section 232(b) is retained and placed in this section providing for testimony outside the presence of the minor's parents or guardian. In addition, no petition for adoption may be heard until appellate rights have been exhausted and preference for adoptive placement is given to the relative caretaker or foster parent when the child has formed substantial emotional ties.

SB 243 also requires the county welfare department to conduct and prepare an extensive assessment including, in part, documentation of efforts to locate absent parents and degree of parent-child contact, evaluation of the minors' medical and emotional status, and an evaluation of the likelihood that the minor will be adopted, including any identified prospective adoptive caretakers. This assessment must be prepared and submitted whenever the court orders a hearing pursuant to WIC Section 366.26.

Notice provisions in connection with the proceeding to develop a permanent plan are added in WIC Section 366.23. If the recommendation is termination of parental rights, precise procedures and methods of notice are required.

SB 834 (Presley)

One of the key issues raised during December, 1986 hearings of the Senate Select Committee on Children and Youth was California's lack of a statewide, coordinated training program providing practice-relevant training to public and private

nonprofit child welfare practitioners. In light of this finding, it was the view of the task force that one of the most immediate ways to improve California's statewide child protection efforts would be through the provision of practice-relevant training which would be specific to the needs of the various professionals providing child welfare services to at-risk families. SB 834 was proposed to establish that training program.

Child Welfare Services (CWS) are statutorily defined in WIC Section 16500 et seq. They include:

° The Emergency Response Program, which provides immediate in-person responses to reports of abuse, neglect, or exploitation;

° the Family Maintenance Program, which is designed to provide time-limited protective services to prevent or remedy abuse, neglect, or exploitation, for the purpose of preventing separation of children from their families;

° the Family Reunification Program, which is designed to provide time-limited foster care services when children cannot safely remain home and need temporary foster care while services are provided to reunite the family; and

° the Permanent Placement Program, which is designed to provide an alternate permanent family structure for children who cannot safely remain at home.

While it was the intention of the task force to require that all of the professionals delivering child welfare services, as well as mandated child abuse reporters, should receive training, the task force also recognized that funding limitations would likely require the provision of training in stages. As a result, the task force proposed that Emergency Response social workers be given the highest priority for immediate training and that the Child Welfare Training Advisory Board, established by SB 834, be authorized to oversee training programs and to advise the Director of the State Department of Social Services in prioritizing the efforts of the program. It was the view of the task force that the continuing increase in child abuse allegations in California, the highly legal and technical nature of child abuse investigations, the need to protect the due process rights of children and alleged abusers, the complexity of child abuse situations, and the need for sensitive yet effective authoritative interventions to protect children, demanded that the highest training priority be given to those practitioners who respond to reports of abuse or neglect and make recommendations to the court regarding the need for dependency and other protective service interventions.

In summary, SB 834 does the following:

° Requires the Department of Social Services to select an agency to provide a statewide training program for public and private practitioners who work under the mandates of the child abuse reporting and child welfare services statutes. Specifically, the training would be required to:

1. Train county child welfare services social workers, social workers in agencies under contract to the counties to provide child welfare services, and mandated child abuse reporters.

2. Provide practice-relevant training to those persons and develop curriculum materials and training resources. The training is to include, but not be limited to, crisis intervention, investigative techniques, rules of evidence, indicators of abuse and neglect, assessment criteria, intervention strategies, and legal requirements of child abuse reporting laws.

3. Assess the program's performance annually. The assessment is to include the number of persons trained, the type of training provided, and the degree to which the training is perceived by participants to be useful in practice.

° establishes a Child Welfare Training Advisory Board composed of nine members appointed by the Director of the State Department of Social Services to facilitate the development of the training program;

° requires an appropriation of funds for the training through the annual Budget Act. If the allocation is insufficient, the State Department of Social Services is to prioritize the efforts of the program in consultation with the Child Welfare Training Advisory Board;

° amends the funding formula for statewide training and technical assistance programs which are contracted out by the Office of Child Abuse Prevention pursuant to AB 1733 (Chapter 1398, Statutes of 1982) in order to redirect these funds to the child welfare training program.

SB 1219 (Presley)

While the framework of California's child abuse reporting laws dates to 1963, the basis of the current reporting laws were established by SB 781 (Chapter 1071, Statutes of 1980). Since 1980, the child abuse reporting laws have been amended numerous times. These amendments have typically focused on the

definitions of child abuse, the categories of mandated reporters, and reporting procedures. Because the amendments have been made over a period of years, changes have been incorporated in a piecemeal fashion. It was the view of the task force that the language of the child abuse reporting laws needed clarification, and in some instances consolidation, to enhance their linkage with the child dependency laws under WIC Section 300 et seq., and the child welfare services laws under WIC Section 16500 et seq., to promote a more coordinated body of laws regarding the protection of children.

Therefore, the changes outlined in SB 1219 are designed to clarify the definitions of reportable child abuse, the duties of mandated reporters, and the responsibilities and authority of local law enforcement and county welfare and probation departments. It was the intention of the task force to propose clarifying language in SB 1219 which would eliminate existing ambiguities and assist all of the professionals involved in the protection of children -- local law enforcement agencies, county welfare and probation departments, the professionals mandated to report child abuse and neglect, as well as the community at large.

The following specific changes to the Penal Code reporting laws were enacted under SB 1219:

° Clarifies that the reference to corporal punishment in the definition of child abuse is a reference to "unlawful" corporal punishment, as defined elsewhere in the Penal Code;

° amends the term "child abuse" to exclude mutual affray between minors. The task force believed that clarification was necessary to exclude schoolyard fights from the definition of child abuse;

° supplements numerical cross reference to Penal Code sections in the definition of sexual assault with a listing of the type of conduct included. This change was added to assist mandated reporters in determining what constitutes reportable sexual assault of a child, recognizing that they generally do not have access to the full Penal Code;

° amends cross-reporting requirements to mandate law enforcement agencies to report suspected child abuse or neglect to county welfare departments only when it is alleged to have occurred as a result of the action of a parent or guardian, or as a result of the failure of a parent or guardian to adequately protect the minor from abuse or neglect. Since county welfare departments are only responsible for intervening in abuse and neglect situations which involve a person responsible for the child's welfare, the task force believed it was inappropriate to

refer cases to county welfare departments which do not involve the person responsible for the child's care. Such referrals set up false expectations that county welfare departments will intervene and provide services in situations that do not stem from the acts or omissions of parents or guardians (stranger abuse, for example);

° authorizes county welfare departments to determine if an immediate, in-person response to a report of child abuse or neglect is necessary, based upon a professional assessment which must include collateral contacts, a review of previous referrals, and an evaluation of any other information relevant to the allegation. The task force believed that professional assessment after receipt of a child abuse report should be seen as an opportunity for an in-person response if abuse or neglect is present or likely. This initial professional assessment will be made through governing regulations developed by the State Department of Social Services which clearly delineate the steps to be taken before a decision is made that a face-to-face contact is not appropriate, in order to ensure uniform county compliance and implementation.

PART II: ADDITIONAL RECOMMENDATIONS/UNRESOLVED ISSUES

While the changes incorporated in SB 243, SB 834, and SB 1219 are comprehensive in scope, the task force uncovered numerous other problems in child welfare matters for which it was felt additional legislation would be necessary or for which remedies were not immediately apparent. Among the issues is the ongoing need for adequate services to meet the needs of at-risk families, especially services which are targeted at the prevention of abuse or neglect, as well as services to meet the needs of minors who will no longer be eligible for juvenile court adjudication effective January 1, 1990. Other issues relate to juvenile court procedures, the growing number of special needs children for whom dependency procedures may be inappropriate or inadequate (infants born with AIDS or drug dependencies, for example), the need for additional Child Welfare Services (CWS) data collection, the special circumstances relating to incarcerated or institutionalized parents of dependent children, accountability for false child abuse reporting, and others. This section of the report describes these and other problems and, where possible, presents the task force's recommendations.

Services Issues

An issue consistently brought to the attention of the task force was the need for additional services for at-risk families and children. Representatives of public and private service agencies and advocates for children and parents expressed concern that prevention programs such as respite care, in-home caretakers, teaching/demonstrating homemakers, family therapy, support groups, parenting training and substance abuse rehabilitation programs are inadequate and should be expanded. County social service agencies, particularly in large urban counties, generally reported a lack of such prevention services and, therefore, an inability to accommodate in a timely fashion those families who require these services.

The task force recognized that these services, if adequate, could keep families from coming to the attention of the court, or for those who come to the attention to the court, prevent the need to remove children. In addition, the task force recognized that some minors who are presently adjudicated as dependents will no longer be served by the child welfare service system, effective January 1, 1990; therefore, alternative services must be developed for this category of minors. (SB 243 mandates the Health and Welfare Agency to report to the Legislature by January 1, 1989 its recommendations for alternative programs, funding streams, and service delivery systems for minors who will no longer be subject to adjudication.)

While the task force was uncertain about the precise impact of SB 243 on existing service demands, the task force affirmed the principle that the best alternative to removal of a child and placement in out-of-home care is a sufficient level of preplacement preventive services. The issue is discussed in more detail below.

° New Requirements for Reasonable Efforts. Under SB 243, WIC Section 306 (which governs the conditions under which a social worker may determine that a child must be removed from the natural home and placed in protective custody) states that in order to to provide maximum protection for children who are abused or neglected, a full array of social and health services should be available. It requires the social worker to consider if the provision of CWS services or a referral to public assistance would eliminate the need to take temporary custody of a child, and to utilize such services as are available. WIC Section 319 (which governs the court in determining whether a child should be returned home or continued in protective custody) requires the court to make a finding that reasonable efforts were made to prevent the removal of the child and to determine if there are available services to prevent the need for further detention. The court must also review the decision made by the social worker on whether or not to refer the family to public assistance.

A finding that reasonable efforts have been made in each case is required in order to qualify the child for federal foster care funds. These funds pay for 50% of AFDC placement costs. Under the federal Adoption Assistance and Child Welfare Act (PL 96-272), if the court finds that reasonable efforts have not been made in a given case, the state may not seek federal foster care reimbursement for the child. Therefore, the task force believes that the reasonable efforts language will provide an incentive to establish and fund services which would prevent the need to remove children from their families and ensure the maximum federal reimbursements.

However, the task force felt that the level of need for such preventive services is unclear. Therefore, the task force recommends that a comprehensive review of available services, combined with a review of the need for additional services, should be undertaken by an oversight body such as the Auditor General or the Legislative Analyst.

Moreover, the definition of "reasonable efforts" is unclear. The following listing was presented to the task force as indicative of the types of services that should be provided to children and families in order to show that reasonable efforts were made:

- Family preservation services (usually in-home, intensive services for brief period);

- generic family-based/family-centered services (usually not as intensive as family preservation);

- cash payment to meet emergency needs or to provide ongoing support;

- services to meet basic needs such as food, clothing, housing, and shelter for families;

- services to address specific problems, such as in-home respite care, out-of-home respite care, child care, treatment for substance abuse/chemical addiction, treatment for physical or emotional abusers and victims, treatment for sexual abusers and victims, mental health counseling/psychotherapy in a day treatment setting, parenting training, life skills training, and household management.

° Children and Families Not Subject to Juvenile Court Intervention But Who May Be at Risk. There exists another group of children and families who are not likely to come to the attention of the courts (neither under the prior guidelines of WIC Section 300 nor under those adopted by SB 243) until, possibly, the family situation deteriorates to the point that children need to be removed from home. These are children living in situations of neglect whose homes could be improved with minor assistance. The only source of identification of these fragile families has been the social service system. Some of these children are repeatedly reported to child protective agencies, but the threat to their health or safety is not considered severe enough for court intervention. Some of these families may be found in voluntary family maintenance programs, where services are provided for up to one year; however, supervision tends to be limited because of the crush of more serious cases. The real problem appears to be a lack of child welfare and other social servi s available to assist these families in the absence of a crisi Again, the task force recognized that the level of need for services, as well as the size of the population in need of services, are unknown factors.

For both groups of at-risk children, those who will come to the attention of the courts, and those not likely to, the key to avoiding long term foster care is early help. At this time, the courts and the social service agencies are organized to respond only when a major crisis exists, far beyond the point when early help would have saved a deteriorating situation.

° Who Should Provide These Services? Members of the task force agreed that after the identification of necessary preventive and placement services, an evaluation should be undertaken to determine whether these services should be delivered through the CWS system or whether another system would be more appropriate. One of the primary purposes of SB 243 is to delineate clearly the types of families which are best served in the dependency setting. Because a child has a mental health problem, a substance abuse problem, a serious medical condition, or demonstrates severe acting out, does not mean the child should become a dependent of the court and that his/her family should receive child welfare services. A variety of service resources which enable families to find help in overcoming their problems must be developed in appropriate agencies.

Several groups, task forces, and committees are already working on some of these areas. The task force recommends coordination of their proposals in order to avoid future duplication. Among those studying these areas include:

Senate Select Committee on Children and Youth. SB 243 mandates the Committee to conduct a hearing on the implementation of SB 243 and its effectiveness in ensuring protection for children who are at risk of abuse or neglect. The hearing shall be held prior to January 1, 1991. In addition, members of the task force are committed to continued, quarterly meetings, under the guidance of the Committee, to review of SB 243's implementation to ensure its effectiveness in protecting at-risk children and families.

Legislative Analyst. SB 243 mandates that the Analyst report to the Legislature on the effect of SB 243 no later than January 1, 1992.

Health and Welfare Agency. SB 243 requires the Agency to review the effect of SB 243 on minors adjudged dependents of the juvenile court, including any minors presently eligible for adjudication who will not be eligible for adjudication after January 1, 1990. It further mandates that the Agency prepare recommendations for new programs to be implemented by January 1, 1990, to meet the needs of these minors. The recommendations are to include appropriate funding sources and service delivery systems. The Health and Welfare Agency has recently convened an Out-of-Home-Care Task Force, which includes a broad representation of agencies and advocacy groups who are identifying populations in need of out-of-home care, service needs and licensing issues, and service delivery and coordination issues. Among the issues addressed by the Agency task force include the need for related services to reduce the need for foster care placement and supplement foster care placement.

The AB 4411 Task Force. AB 4411 (Chapter 830, Statutes of 1986) directed the State Department of Social Services to establish a task force to conduct a study of the problems of medically fragile children in care outside of an acute care hospital who are dependents or potential dependents of the court. The AB 4411 task force is to focus on the problems of medically fragile children and report to the Legislature their findings and recommendations. Recommendations are to include: Changes in licensing categories, how to ensure the ability to serve the medically fragile child, qualifications and training of care givers and suggested funding for any specific recommendations.

The Child Victim/Witness Judicial Advisory Committee. This committee is presently reviewing investigative and judicial practices and procedures as they pertain to child victims and witnesses, with particular emphasis on recommendations for coordination of related civil and criminal proceedings.

The task force recommends that any proposals for new or expanded programs which are developed by these and other groups stress access to services outside the dependency court system for those children whose service needs do not stem from abuse or neglect in the home. A variety of service resources which enable families to overcome their problems, not just those ordered by the juvenile court and offered through the child welfare system, should be developed by appropriate agencies working in coordination with one another. Additionally, alternative due process systems must be developed other than juvenile court dependency which would allow out-of-home placement for needed but not dependency-related services. One recommendation presented to the task force would be the development of a voucher system with which families could choose from a menu of services.

Infants Born with AIDS

The past five years have seen a major increase in the allegations of child abuse and neglect. In conjunction with the growth in reported incidences, the severity of cases has also increased, many clearly related to substance abuse. Thus, the child welfare system has seen a dramatic increase in the numbers of high risk children needing child protective services. In addition, the future dependent care system will be increasingly stressed by children with AIDS. There is a pressing need for activities at the state and local level to address issues of young children with AIDS. Additional resources and specialized care are needed in both the child welfare and foster care programs.

Therefore, the task force believes it is imperative that the Legislature convene representatives of the public and private sectors to address the multiple issues of drug dependency and

AIDS issues for children. Of primary importance to child welfare advocates is the correlation between AIDS, drug abuse, and sexual molestation. The task force agrees that the following concerns must be addressed:

° Should AIDS testing be required for parents and children from high risk backgrounds?

° What is the role of informed consent as it relates to testing children?

° Whenever possible, children with AIDS who need placement should be placed with the smallest population of other children to reduce chances of reinfection.

° Foster care/reimbursement rates may need to be raised for foster parents who care for children with AIDS.

° Foster parents of AIDS children need intensive support services (respite care, counseling, for example).

° There are unmet service needs to deal with the effects on parents or other children living with someone dying from AIDS.

° What is the best mechanism for linking with health care/dental care providers?

° How can counties begin to recruit and train foster parents for AIDS children before the need for homes becomes critical?

° Should AIDS testing for children from high risk backgrounds be required before making permanent placement decisions?

° What are the legal implications of placing a child for adoption or in foster care with as yet undiagnosed AIDS?

In short, the task force believes that dependency issues for children with AIDS are enormously complex and in urgent need of further study. It is likely that the number of children entering the dependency system with these conditions will stress existing resources beyond their ability to provide necessary services.

Special Needs Children

SB 243 continues to provide the court with three options when children cannot be reunified with their parents pursuant to the new WIC Section 366.26: Terminating parental rights for adoption, ordering legal guardianship, or ordering long term foster care placement. These options are appropriate for most children. However, county welfare departments supervise many

special needs children for whom extremely comprehensive efforts are required to determine whether or not an appropriate adoptive family can be found, when adoption is the preferred permanent plan.

For those children who are not immediately adoptable but for whom recruitment efforts have historically been successful in locating adoptive homes, a fourth permanent plan option would provide for an extended but still time-limited period to pursue these efforts. Active recruitment efforts would be made without disrupting a child's adjustment to an alternate long term plan, yet the child would have the opportunity to be placed in an adoptive family. Should the recruitment efforts be unsuccessful, the court could still order legal guardianship or long term foster care placements.

Specifically, the task force recommends new legislation to amend WIC 366.26 to include a fourth option which would allow the court, without permanently terminating parental rights, to identify for specifically defined special needs children adoption as the permanent placement goal and order that efforts be made to locate appropriate adoptive families for these children for a period not to exceed 180 days. The task force believes that the new fourth option would provide special needs children with the opportunity for a permanent home, instead of forcing the court to precipitously terminate parental rights or order an alternate permanent plan.

Party Status in Juvenile Court

The juvenile court is regularly faced with parties other than the biological parents of a dependent child who are requesting standing to participate in the court proceedings. The court must weigh the confidential nature of the proceedings against the desire to obtain all available information and the need to act in the best interests of the minor. Among those who routinely seek entry into juvenile court proceedings are foster parents, defacto parents, and extended family members. These individuals are treated with wide disparity in various courtrooms, ranging from being given standing to participate to requiring a formal motion to participate as substantiated by expert psychological witnesses, and from appointing counsel to denying the right to counsel.

The task force believes that refinement of the definition, standing, and rights of those seeking party status is needed to eliminate confusion and clarify varying appellate court decisions. Questions to be answered include: Who has a right to court appointed counsel? Does a person seeking defacto parent status need or have the right to court appointed counsel in order

to assert this status? By what burden of proof is the court to judge the parent-child psychological relationship in determining whether to grant standing?

Further, the task force recommends in determining what legislative guidance needs to be given, careful attention must be paid to the particular stage of the proceedings. A stepparent who has been the primary parental figure since infancy of a minor now twelve years old might need standing at the initial stages of detention, while a non-caretaking uncle desirous of placement may not bear consideration for standing until dependency has been established. Even then the parent's and the child's right to privacy require careful consideration. Finally, a foster parent who has established a strong relationship with a child and who desires permanent placement of the child, may appropriately request standing at the permanency planning stage but be denied standing at earlier stages because of his or her special interest in the proceedings.

Testimony of Children in Chambers

The taking of children's testimony in chambers under specific circumstances as authorized by Civil Code Section 232(b) and WIC Section 350(b) has been upheld as permissible by the appellate courts. Problems in implementation of these provisions have arisen, however, as the code sections themselves do not detail the procedures to be followed in determining when a child's testimony should be taken in chambers. Further, existing law does not provide guidance in determining how to take a child's testimony in chambers if the child's parents are proceeding without an attorney and object to being excluded.

The task force initially thought that only technical changes in existing law would be needed to clarify and resolve these matters. However, difficult issues regarding due process and rights of confrontation quickly surfaced. Moreover, the task force was aware that the legislatively established Child Victim/Witness Judicial Advisory Committee is studying this area carefully. As a result, the task force chose not to address these matters further, leaving it to be noted in this report as an unresolved issue which should be addressed further by the Child Victim/Witness Judicial Advisory Committee. The task force also noted that laws relating to the taking of children's testimony in chambers have never been enacted for family law hearings, although the concerns addressed by such statutes apply equally to family law hearings.

Incarcerated and Institutionalized Parents

SB 243 repeals prior law specifying that family reunification services must be provided upon the release of an incarcerated or institutionalized parent. In its place, SB 243 requires that reasonable services be provided to reunify the family unless the court determines that the services would be detrimental to the minor, based upon a nonexclusive list of factors to be considered (such as age of the child, degree of parent-child bonding, length of treatment or incarceration, etc.). SB 243 also specifies that a parent may be required to attend counseling, parenting classes, or vocational training as a part of the service plan.

These provisions represented the task force's consensus for improvements. However, the task force also agreed that there are remaining issues to be resolved, but that additional information is needed before attempting further legislation. Advocates for prisoners with children estimate that there are 6000 incarcerated women and 45,000 incarcerated men with minor children. Further estimates are that about one-third of the children with incarcerated mothers are in foster care. There are no figures for fathers. The members of the task force, as well as providers of services to this population, agreed that the collection of data and study of the following:

° Census of the population of incarcerated parents with children in foster care, including a distinction between those with previous existing relationships and those with no contact;

° statistical information regarding the numbers of children in foster care with incarcerated/institutionalized parents;

° practices and procedures utilized by counties for notifying incarcerated parents of dependency proceedings;

° barriers which discourage parents from attending juvenile court hearings;

° recidivism rates of parents with custody of children;

° frequency of visits to incarcerated/institutionalized parents by children placed in foster care.

Additionally, other significant issues came to the task force's attention which could not be resolved. These include:

° Whether increased assistance to relatives, such as legal assistance with guardianships, would lessen the need for dependency proceedings;

° whether it is feasible to establish circumstances under which a nonabusive parent would be denied services, such as a lengthy prison term;

° how to improve communication and access between the county with custody of the child and the incarcerated parent, and between the county and the correctional system.

Parental Rights When Children Are in Long Term Out-of-Home Placement

Under existing law, parents can lose long term custody of their children although their parental rights may not be terminated. Such children are in guardianships or long term foster care placement. Existing WIC Section 366.3 allows parents of such children to re-petition for custody or visitation and reunification services, should their situation improve and allow for custody to be resumed. Under SB 243, such parents will receive notice of failed guardianships or any juvenile court hearings regarding the minor.

However, some advocates for parents reported to the task force that additional clarification was needed. The most likely case would involve noncustodial parents who are not in a position to seek custody at the time of intervention but whose circumstances later improve. The task force did not develop additional legislative recommendations as the consensus was that present law is adequate. Nevertheless, the task force agreed that such parents should have the right to seek custody and/or services and that future legislation may be necessary for clarification if local practice is contrary to existing law.

Child Welfare Services Information Concerns

The task force recognized that while reports of child abuse and neglect continue to escalate, there is no statewide Child Welfare Services (CWS) reporting system providing both accurate and current information on individual county CWS programs. Yet the State Department of Social Services (SDSS) is responsible for monitoring each county's CWS program and knowing when and what statutory and regulatory changes are needed to ensure that CWS programs are effectively in place to protect at-risk children and their families.

Currently, CWS information is obtained from four sources: the Preplacement Preventive Services Report, the Foster Care Information System, special statistical surveys, and county compliance reviews. The Preplacement Preventive Services Report is designed to collect aggregate caseloads for the Emergency

Response and Family Maintenance programs; the Foster Care Information System collects child specific information on children in the Family Reunification and Permanency Planning programs; and the surveys and compliance reviews are conducted periodically to gather needed information which is not available from the other two sources. However, these four sources still do not provide sufficient information to adequately assess the CWS programs. In addition, these evaluations often contain information which is inaccurate or out of date.

To adequately manage and assess the four Child Welfare Services programs, the State Department of Social Services reported to the task force that it believes a statewide CWS case management system is needed which will collect case specific information on children in each of the four programs. This information should provide historical and longitudinal information on each child, collect aggregate information for program management purposes, and provide complete and reliable information to assess county compliance. The task force also believes that the information must be accurate, timely, and readily accessible to state and county staff to enable them to make appropriate, expeditious program decisions. The information should also be useful to the Legislature in determining whether policy changes are needed and whether sufficient funds have been allocated to provide an appropriate level of services.

Specifically, the SDSS recommends that data gathered should enable current and accurate answers to the following questions:

° Who are the children receiving CWS?

Has the child been referred previously? If so, how many times and when was the most recent referral?

Who referred the child (e.g., neighbor, police, school)?

Under which CWS program is the child currently receiving services?

Under which CWS program(s) has the child previously received services? How long did the child remain in each program?

How old is the child? What is the child's ethnicity? the child's sex? What disabilities does the child have?

Is the child part of a sibling group? What is the composition of the sibling group? Where are the siblings located?

° Why are these children receiving CWS?

Has the child been physically abused?

Has the child been sexually abused?

Has the child been neglected or abandoned?

Has the child been exploited?

° Where are these children residing while receiving CWS ?

Was the child removed from a custodial/noncustodial parent, guardian, or relative?

Has the child ever been removed before? If so, how many times, and when was the most recent removal?

Is the child living with a custodial/noncustodial parent or guardian?

Is the child placed with relatives?

Is the child placed in an emergency shelter care facility?

Is the child placed in a foster home or a group home?

Is the child's placement appropriately licensed, or is it exempt from licensing?

What is the child's address?

Is the child placed with siblings?

How many placements has the child had? How long did each placement last?

° What are the goals for the child receiving CWS, and how will these be achieved?

Is the child to remain with the parent or guardian?

Is the child to be removed from the parent or guardian?

Is the child to be returned to the parent or guardian?

Is a guardian being sought for the child?

Will the child be maintained in long term foster care?

What services is the child receiving?

° Who is responsible for the children receiving CWS?

What county is responsible for the child?

What agency within the county is responsible for the child? Who is the social worker?

Has the child been freed for adoption for twelve months and no petition for adoption been granted?

Is the child receiving CWS by voluntary agreement with the parent or guardian, or by court order?

Is there a foster family agency involved?

° Are CWS regulations being met?

Are agencies responding to emergency referrals within required time frames?

Is the child's situation being assessed and reassessed according to the required time frames of the program?

Is an individual service plan being developed within the required time frames?

Is the court assessing the child's progress in the CWS system as frequently as required?

Is the child being visited as frequently as required?

Are foster parents being contacted as frequently as required?

Is the child's adoptability being determined, when appropriate?

The State Department of Social Services reported that it is currently conducting a study to determine the feasibility of designing a statewide online case management information system similar to other systems which are already in operation at the state level, or accessing other individually operated county automated data systems. Specifically, the primary focus of the feasibility study is to analyze all practical automated systems in order to determine the most viable method for gathering and processing county and statewide CWS data.

In addition to these data, however, the task force recommends that additional data are needed which will help to understand the way in which reports of abuse and neglect are responded to by CWS workers. The SDSS reported that 60% of all cases where abuse or

neglect is suspected are closed after the initial investigation. However, these figures do not reveal whether the report was unfounded (false, or no abuse or neglect found); unsubstantiated (insufficient evidence to make a finding of abuse or neglect); or whether a family might have been in need of some services (most likely prevention services) but there were insufficient resources available and/or the worker's caseload was already unmanageably high. Moreover, some concern was expressed to the task force over the new provision of SB 1219 which allows an initial assessment in determining whether or not an immediate face-to-face response is required. Therefore, in addition to the above information, data collection should also focus on the following items:

° The number of reports received;

° the number of these reports responded to face-to-face;

° the number of reports responded to in some other fashion, and the reason why;

° the number of unfounded cases;

° the number of unsubstantiated cases;

° the number needing prevention services where no referral was available.

Accountability for False Reports

The task force discussed the issue of ensuring accountability for individuals who knowingly make false reports of child abuse or neglect or who make reports with reckless disregard for the truth. This issue was addressed in response to the perception among many professionals that as public awareness increases, there has been an increase in false reports of child abuse, especially allegations of sexual abuse in the context of custody and visitation disputes. Those individuals who falsely report appear to be using their increased knowledge and sophistication to willfully manipulate the legal system to achieve their personal agendas, such as attempting to gain custody of a child or deny visitation rights to the accused, or retaliating against a family member or neighbor. Such false allegations are disruptive to the judicial system and cause mental and financial suffering to the falsely accused party. In some circumstances, the false allegations also have a detrimental affect on the children who may be subjected to detailed interviews and/or removed from the home.

While the task force recognized that the best available evidence indicates that false reports constitute a small percentage of total reports, the consensus was that the matter warranted serious consideration because of the potential trauma caused to a child unnecessarily removed, potential damage to an individual's reputation from a false report, and the seriousness of the resulting consequences. However, this issue proved difficult to address. Among the factors to be considered are the following:

° California, as does every state, attempts to encourage its citizens to protect children by reporting suspected child abuse without fear of legal consequences through the provision of statutory immunity from civil and criminal liability to persons making good faith reports.

° California's statute provides that no mandated reporter who "reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this statute." The statute further provides that "[a]ny other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any such person who makes a report of child abuse known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused." (Penal Code Section 11172, subd.(a)).

° Mandated reporters must report when they "reasonably suspect" child abuse; they are fully protected from civil and criminal liability for making such a report. For other reporters, California statutes clearly permit civil actions against those who knowingly make false reports or knowingly make reports with reckless disregard for the truth or falsity of the report. Further, existing law also authorizes a court to order a party, and/or his attorney, to pay reasonable expenses incurred by another party as a result of bad faith or frivolous actions intended to cause delay.

In light of these facts, the task force discussed the following remedies:

° Civil Remedies. Those individuals who believe they have been the object of a deliberate false report may secure counsel and then try to prove the report was knowingly false or made with reckless disregard for the truth. However, most individuals do not pursue this course of action because of the expense and time involved, or because they are advised by counsel of the difficulties in proving that a report was knowingly false or made with reckless disregard for the truth.

Yet the language of the statute is quite explicit in permitting civil actions against those citizens who knowingly make false reports or knowingly make reports with reckless disregard for the truth. As a result the task force made no recommendations for changes to this statute.

° Criminal Remedies. Since civil remedies for false reports are difficult to pursue and prevail in under existing law, the task force discussed the possibility of creating a specific misdemeanor sanction for false reports. But the task force was reluctant to create a new crime, particularly one that appeared relatively difficult to enforce and one that might discourage legitimate reports by persons who fear being charged with a crime.

° Family Law Remedies. One additional approach discussed was the imposition of court sanctions in family law proceedings on a person who makes a groundless accusation of child abuse against another person. This approach is currently being considered by the Legislature through Senate Bill 1461. SB 1461 would require the imposition of a sanction of up to $5,000 against a party to a family law proceeding, or his or her attorney, or both, if the court finds that an allegation of child abuse made against another party in that proceeding was groundless and made in bad faith to harass the party so accused. The bill would also require the Judicial Council to incorporate a statement on the petition for dissolution of marriage giving notice of the sanctions, which could act as a deterrent to false reports. Caution must be urged in these instances, however, since legitimate cases of child abuse often surface during a dissolution. Failure to make an appropriate finding could result in punishment of parents legitimately concerned about protecting their child and placement of the child in the custody of, or ordering visitation with, an abusing parent.

In summary, existing law authorizes a court to order a party, and/or his attorney, to pay reasonable expenses incurred by another party as a result of bad faith or frivolous actions intended to cause delay. Civil actions for slander or malicious prosecution are also available. The task force felt that if the authority of these laws does not deter the making of false allegations, it is difficult to see how the addition of similar, albeit more specific, laws would curb the vexatious instincts of some individuals. Nevertheless, the task force also recognized that false allegations of child abuse have ramifications which warrant consideration of additional imposition of monetary sanctions in family law proceedings, since abuses occur most frequently in this situation. Such allegations could result in the loss of custody of the children, the loss of a job, and the accumulation of large attorney's fees. Moreover, where the children are taken out of the home or are used as pawns in a

difficult divorce action, the impact of false allegations on the children may be the equivalent of child abuse.

The task force remains concerned about those who may be falsely accused. However, the task force supports the state's goal of encouraging its citizens to protect children by reporting suspected child abuse and is unable to suggest any legislative remedies beyond the civil remedies currently provided for in statute and the proposal currently in the Legislature (SB 1461).

Issues in Child Abuse Investigations on Federal Property

Public Law (PL) 99-145, enacted in November of 1985, established a Department of Defense (DOD) Family Advocacy Program (FAP) and Family Advocacy Committee (FAC) and encourages states to report to the Secretary of Defense suspected instances of child abuse involving military personnel. Memoranda of Understanding are encouraged between local governments and federal authorities at each federal military installation to facilitate cooperation in dealing with child abuse involving military personnel or their dependents.

In attempting to comply with the DOD's formal request for state assistance in a joint federal/state effort to establish cooperative reporting procedures regarding suspected instances of child abuse involving military personnel on federal property, the State Department of Social Services has encountered several issues concerning confidentiality provisions for both federal and state child abuse records. The task force felt that resolution of many of these issues is necessary before cooperative efforts between county welfare department and military installation officials can be realized. Major issues are summarized as follows:

° Conflicting Federal Confidentiality Requirements. PL 99-145, which encourages the reporting of suspected child abuse to representatives of the Secretary of Defense, appears to be in conflict with the federal confidentiality requirements expressed at 45 CFR Section 1340.14(i)(2)(viii), which prohibit sharing of such information with persons other than categories specified. Military personnel are not a specified category with whom child abuse information may be shared.

° State Confidentiality Requirements. California law, contained in Penal Code Section 11167.5, prohibiting the sharing of any child abuse report information except to specified individuals, does not include various potentially involved persons among those individuals specified in law who may receive child abuse report information. For example, military policemen (MP) at entrances of a military installation are required to know

the identity of visitors and the purpose and destination of the visit. When possible abuse has been identified, the Family Advocacy Representative (FAR) accompanies the social worker to the home. The FAR is frequently present throughout interviews on base regarding allegations of child abuse.

In addition to the presence of this "unauthorized" person at the interview session, neither the state nor the county has control over any written records kept by the FAR, nor over any accessibility to records kept by other military personnel. It is also not clear whether the federal intent is to have child welfare and other social services provided to families.

Military establishment interests also seem to focus on the determination of the impact of the alleged abuse on the alleged perpetrator's capacity to perform his or her military responsibilities. The federal government is the employer of alleged child abuse perpetrators who are members of the military. This presents a unique circumstance under which an employer has access to child abuse report information involving an employee. It could result in sanctions against military personnel for whom an allegation of abuse is later found to be unsubstantiated.

° Other Jurisdictional Concerns. Various matters relating to civilian dependents residing on military property, civilian abusers residing on federal property, and prosecution rights are unclear. Some states have established policy on a base by base basis. U.S. Military Justice applies only to active duty military personnel; it does not apply to civilian dependents residing on federal lands. When abuse by military personnel occurs on nonfederal property, is investigation of abuse in this circumstance subject to local or federal law, or both?

° Mobility of Military Personnel. The nature of employment with the military often involves travel and frequent changes of duty stations. In the event of alleged abuse, there is no guarantee that a family will remain at a duty station for the period of time needed to receive child welfare services. In addition, since child abuse report information may not be shared with military personnel, there may be no way to follow up on an abuse allegation. The alleged perpetrator may be relocated before an investigation could be completed and there would be no record of prior abuse allegations in the new location.

CONCLUSION

The task force believes that SB 243, SB 834, and SB 1219 will go far towards ensuring greater continuity among child abuse reporting laws, dependency statutes, and child welfare services and, consequently, enabling the greater protection of at-risk children and families. Much work remains to be done in these areas, however, and the task force, in coordination with other interested groups and agencies, will need to continue their efforts on behalf of abused and neglected children and their families. A major priority of the task force and other groups must be developing means of ensuring the funding and provision of public and private services to alleviate family crises which threaten the well being of children, to prevent the breakup of families, and to reunify families when children need to be removed for their safety.