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Warrants

Purpose

To provide guidelines on the use of warrants in social work practice.

Approved

This policy was approved by Gary Taylor, Director of CFS, on December 18, 2013. *Signature on file*.

Most Recent Revision

This revision of the Policy and Procedure (P&P) includes:

- Requirement for Program Manager (PM) approval prior to taking a child into protective custody without a warrant

Background

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

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

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

Warrants may be initiated by Court for various reasons, including warrants of arrest for parents who fail to appear after being noticed or ordered.

Definitions

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

After Hours Service (of Warrant): Warrant issued after 3:30 p.m. and will be served prior to 10:00 p.m. on the date of issuance. (**Note:** Before requesting an after hours warrant, consider whether the circumstances requiring issuance of the warrant could wait to be addressed on the following day, when the Court is open on that following day.)

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

A situation considered exigent must have documentable factual information to indicate the child is in imminent danger of serious bodily harm or evidence may dissipate if action is delayed and immediate action by the social worker is reasonably necessary to avert that specific injury.

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

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

Qualified immunity: Immunity from liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory

rights. Qualified immunity shields a government official from liability for civil damages if the law governing the official's conduct was clearly established and, under that law, the official objectively could have believed that his/her conduct was lawful. For CFS, immunity from liability for social workers who perform their job duties as directed by the law and agency policy.

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

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

POLICY

Consideration of Constitutional Rights

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

Search/Entry Warrants—Non-Dependents

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

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

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

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

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

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

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

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

1. Explain to the parent/guardian that CFS is required by law to investigate reports of suspected abuse or neglect (WIC § 328) and, without their consent, must return with a Court search/entry order served by law enforcement.

2. Ask to see the child from the doorway to help assess the urgency of the situation.

3. Ask to see and briefly interview the child outside the home.

4. Consider if an interview at school is appropriate.

5. Request law enforcement’s assistance. Law enforcement can determine whether the parent/guardian is on probation or parole and subject to a search and seizure order; they may also independently determine whether exigent circumstances exist to justify entry and/or may also seek a search warrant, if appropriate.

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

7. Consider filing a warrant to gain home entry.

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

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

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

1. Can imminent danger be specifically articulated and documented?

2. Is there information suggesting the child may suffer serious bodily harm in the time it takes to obtain a warrant?

3. Do observations at the door indicate signs of abuse that place the child at imminent risk?

4. Is the parent admitting abuse/neglect?

5. Is the parent/guardian under the influence of a controlled substance?

6. Is there a dangerous condition in the home that is evident and can be specifically documented (e.g., loaded weapons in reach of children, presence of drugs and/or paraphernalia, excessive garbage, or unsanitary conditions)?

7. Is there an articulable danger that the parent/guardian may abscond with the child?

8. Are there credible statements by the Reporting Party or others (i.e., statements by neighbors, etc.) that indicate the child is in imminent danger?

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

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

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

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

C. **Warrant:**

A warrant will be requested after it has been determined, in consultation with the assigned Senior Social Services Supervisor (SSSS) or designee, that neither consent nor exigent circumstances exist and that filing a Non-Detained Petition is not sufficiently expeditious to secure the child's safety (refer to Special Circumstances in "Protective Custody Warrants" Policy section below for further guidelines on Non-Detained Petitions). *Application and Declaration in Support of Warrant (F063-25-589)* will be used to submit the request to Court.

As applicable, attach exhibits to the *Application and Declaration in Support of Warrant (F063-25-589)* (e.g., photos of injuries, dirty home environment, etc.). (Refer to CFS P&P County Issued Cell Phones [B-0202].)

1. During Business Hours: The assigned social worker or SSSS will contact the Court Officer SSSS/designee and County Counsel by telephone and email to discuss whether a warrant is necessary (and should be submitted that evening or the next morning).

   Note: Per Juvenile Court Administrative Order No. 12/009, the cut-off time for submission of warrant applications for execution on the same day is 3:30 p.m. Warrant applications received after 3:30 p.m. will be presented to a Juvenile Court Judge for execution the next court day. (Consult with County Counsel to determine whether a warrant application may be submitted after 3:30 p.m. when the warrant application is

in process, but cannot be completed in time for submission by 3:30 p.m. and, if ordered, the warrant would be executed no later than 10:00 p.m. on that date.)

Protective custody warrants issued for immediate execution may be submitted after 3:30 p.m. and will be deemed a request for night service on the day/night the application is submitted, pursuant to PC §§ 840(4) and 1533. These warrant applications will outline good cause for night service and will be submitted using *Application and Declaration in Support of Warrant – Request for Night Service (F063-25-708).*

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

- Completed by the Warrant desk/assigned social worker
- Emailed to the Court Officer SSSS/designee and County Counsel for initial review and any necessary modification
- Signed by the social worker and SSSS after notification by Court Officer SSSS/designee or County Counsel that the document is approved as to form
- Faxed, emailed, or hand-delivered to CFS Court Officer and County Counsel offices (with a copy of *Court Findings and Orders Authorizing Warrant [F063-25-590]*)

Once County Counsel has signed the *Application and Declaration in Support of Warrant (F063-25-589)*, a Court Officer SSSS/designee will file the *Application and Declaration in Support of Warrant (F063-25-589)* with the Warrants Clerk and deliver it to the designated Juvenile Court Judge, along with a copy of *Court Findings and Orders Authorizing Warrant (F063-25-590)* for the Judge to complete.

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

2. After Business Hours: The assigned social worker or SSSS will contact County Counsel by telephone and email to discuss whether a warrant is necessary. If proceeding, the *Application and Declaration in Support of Warrant – Request for Night Service (F063-25-708)* will be:

   - Completed by the assigned social worker
   - Emailed to County Counsel for initial review and any necessary modification
   - Signed by the social worker and SSSS after notification by County Counsel that the document is approved as to form
   - Faxed, emailed, or hand-delivered to the designated after-hours on-call County Counsel (with a copy of *Court Findings and Orders Authorizing Warrant [F063-25-590])*

Once the *Application and Declaration in Support of Warrant – Request for Night Service (F063-25-708)* has been signed by County Counsel, the designated County Counsel will contact the Presiding Judge of the Juvenile Court or designated Dependency Court Bench Officer and arrange delivery by fax, email, or hand-delivery. The designated County Counsel will also deliver a copy of *Court Findings and Orders Authorizing Warrant (F063-25-590)* for the Judge to complete.

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

If the Judge contacts the social worker by phone with a decision, the social worker will complete the *Court Findings and Orders Authorizing Warrant (F063-25-590)* by adding the Judge's name, date, time, and manner (i.e., by phone) the warrant was granted or denied, along with any other special instructions issued by the Judge.

Whether an after-hours *Application and Declaration in Support of Warrant – Request for Night Service (F063-25-708)* is granted or denied, the social worker will ensure that a hard copy of the entire form is submitted to the Juvenile Court the next business day.

For warrant petitions authorized by Court, the assigned social worker will contact the law enforcement officer and coordinate a return to the home. The social worker will present the signed warrant to the officer who will serve the parent/guardian with the warrant.

For warrant petitions denied by Court, the assigned social worker may consider, in consultation with the assigned SSSS, a Non-Detained Petition for the child.

Note: Per PC § 1534, warrants will be executed within 10 days after the date of issuance. After the expiration of 10 days, unless executed, the warrant is void.

Search/Entry Warrants—Other

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

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

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

School Interviews—Abuse Investigations

Per CFS policy, when considering an interview of a child at school during child abuse investigations, social work staff will use the following guidelines:

A. **Immediate Response Referrals:**

1. Response will be within two hours of assignment notification and without law enforcement. The child will be informed that he/she can refuse to be interviewed or can stop the interview at any time. The school interview will be limited to 30 minutes in duration unless information gathered during the interview suggests imminent risk to the child and further questioning is necessary to make a determination.

2. If information obtained indicates either the need to take the child into protective custody or the need for immediate medical care, school personnel will be notified that exigent circumstances exist. A contact with law enforcement to request assistance will follow.

3. If not placing the child into protective custody and/or immediate medical concerns do not exist but information is gathered during the interview that suggests possible criminal conduct, staff will complete the interview, leave the school premises, and cross report the information to law enforcement.

B. **<u>10 Day Response Referrals</u>:**

Note: Overnight Delay Immediates (ODIs) will follow the guidelines outlined below for 10 Day Response Referrals, since the decision to delay response to the following day indicates that immediate child protection intervention was not determined necessary at the time the child abuse report was generated.

1. School interviews will not be conducted without parental consent, court order, or a warrant for an investigatory school interview.

   Note: When the non-offending parent is the Reporting Party (RP), consider obtaining consent from that parent.

2. A warrant for an investigatory school interview may be appropriate when:

   - Two or more home visits have been attempted and have been unsuccessful
   - Prior history indicates domestic violence or weapons in the home
   - It has been determined, in consultation with a SSSS, that there is other reasonable cause to believe a school interview is necessary to ensure the safety and protection of the child

3. Staff will consult with a SSSS prior to initiating any warrant for a school interview. If proceeding, the above warrant procedure will be followed.

4. A social worker can serve an investigatory school interview warrant without law enforcement present.

5. If a request is made by parents/guardians or school personnel when a warrant is served, staff will provide only a copy of the *Court Findings and Orders Authorizing Warrant* (*F063-25-590)*.

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

School Interviews—Other

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

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

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

Protective Custody Warrants

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

A. **Non-dependents:**
When neither parental consent nor exigent circumstances exist, the social worker, in consultation with their immediate SSSS or a designee, will assess the presence of risk and safety factors and the need to remove the child under non-exigent circumstances. Refer to CFS P&P Structured Decision Making (D-0311) for further information on risk assessment.

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

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

1. Hospital holds: Social work staff will assess the unique circumstances of each referral to determine whether exigency exists (i.e., flight risk with child, newborn has a positive toxicology screen and is experiencing withdrawal symptoms and is ready for discharge, mother admits to

or is exhibiting behavior suggestive of current substance use including a positive toxicology screen, breastfeeding when there is an allegation of substance abuse, etc.). A history of involvement with CFS alone does not demonstrate imminent risk unless a connection with current risk is established and documented. If one or more examples of imminent risk to the child are present, a warrant is not necessary to place a hold.

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

2. Non-Detained Petitions/Removal from Only One Parent: When a decision is made to remove custody from one parent but leave the child in the care of the other parent, regardless of who has physical custody, a warrant is necessary absent parental consent or exigent circumstances.

B. **Dependents:**

When a dependent (or a child who has been taken into protective custody) has run away from placement and whereabouts are unknown or when parents have absconded with a dependent, the child's assigned social worker will request a warrant via an Ex Parte with a *Bench Warrant (Child) (F063-25-701)* and *Declaration to Support Warrant (F063-28-39)* attached and completed with as much information as available.

Exception: A warrant is not necessary for children who have run away from Orangewood Children and Family Center (OCFC) as the Sheriff's Special Officer (SS0) will contact the Sheriff's Department to report the runaway.

Prior to completing the Ex Parte, the social worker will contact law enforcement in the jurisdiction where the child last resided and file a missing persons report. The social worker will indicate if it is believed that the child is with a parent. (**Note:** Use *Bench Warrant (Adult) [F063-25-707]* when requesting a warrant on a parent/guardian). The social worker will ask law enforcement to enter the information into the Missing and Unidentified Persons System (MUPS). When completing the Ex Parte, the Recommendation section will include a request to issue a warrant of arrest, the date on which the social worker contacted law enforcement to provide information for a missing persons report and the report number, and a request

to enter the warrant into the National Crime Information Center (NCIC) wanted persons file. The Recommendations section will also include a request that any/all previous warrants in the system or not served will be recalled.

The Ex Parte will be sent to Court Officers for processing and delivery to the assigned courtroom. When attorneys have reviewed the request and the Judge has ordered or denied the warrant, the assigned social worker will be notified by the Court Officer. If ordered, Court will enter the warrant into the law enforcement system where it will remain until it is served or recalled.

For dependents in the custody of their parent/guardian when there is a new referral or a concern that would necessitate removal from the parent/guardian's care, the ER social worker (for referrals) or assigned social worker (when there is no new referral) will consider the need to request a warrant or to file a Supplemental or Subsequent Petition. Refer to CFS P&Ps Family Maintenance Six Month Review Report (G-0315) and Dependency Intake (A-0502) for further information on filing petitions.

Investigative Medical Exam Warrants

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

A. Parental consent.

B. Exigent circumstances that demonstrate a medical emergency requiring immediate attention or a reasonable concern that material evidence might dissipate (e.g., sexual assault occurring within the previous 72 hours).

–OR–

C. A warrant for an investigative medical exam for a child who has already been detained.

Without exigent circumstances or parental consent, parents must be notified and judicial approval granted before children are subjected to investigatory physical examinations. For court order requests, refer to "Search/Entry Warrants—Non-Dependents" (under the heading "Warrant") in the Policy section above.

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

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

Arrest Warrants

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

SSSS Consultation

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

A. Information available for assessing if parental consent or exigent circumstances applies.

B. Credibility of the information contained in the Child Abuse Registry (CAR) report.

C. Appropriateness of filing a Non-Detained Petition.

D. Use of SDM to facilitate assessment.

E. Other information specific to the child's situation or the allegations.

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

Collaboration with Law Enforcement

The assigned social worker will make a determination of parental consent and exigent circumstances independently from law enforcement.

The social worker must receive consent directly from the parent. Authority from law enforcement alone is not sufficient when entering a home, taking a child into protective custody, initiating an investigatory medical examination, or conducting an investigatory interview at school.

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

Service/Recall/ Return of Warrants

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

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

When the warrant cannot be served, CFS staff will request it be recalled by Court or will return it. *Application to Recall/Return Warrant (F063-25-611)* will be used to submit the request to Court. The reason why the warrant was not served will be included with the request. For processing of the *Application to Recall/Return Warrant (F063-25-611)*, follow the guidelines as set forth in "Search/Entry Warrants—Non-Dependents" (under the heading "During Business Hours") in the Policy section above.

Exception: Warrants requested for dependent runaway children will be recalled via the recommendation in the Court Return report filed by the assigned social worker.

Service/No Petition Filed

Within 72 hours of serving a warrant, Court will be notified when the investigation or school interview does not result in a filed petition. *Notice of Intent Not to Commence Juvenile Court Proceedings Under WIC § 300 (F063-25-591)* will be completed with child's name, J/DP number (if any), and a signature/date of the assigned social worker and SSSS. If no J/DP number exists, the Case Number section will be left blank.

The form will be sent by email, fax, or pony mail to Court Officers. Clerical staff will submit the *Notice of Intent Not to Commence Juvenile Court Proceedings Under WIC § 300 (F063-25-591)* to the Juvenile Clerk's Office, New Petition desk.

Documentation

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

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

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

2. Statements of consent to search the premises of the home and interview the child.

3. Exigent circumstances, if consent was not given.

4. Use of warrant process, if parents refused entry and exigent circumstances did not exist.

B. **Removal:**
The child's referral/case file will contain documentation establishing the assessment used to determine the need for removal. Structured Decision Making (SDM) tools will be used to articulate:

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

2. Exigent circumstances, if warrant was not obtained.

C. **Investigative Medical Exam:**
The child's referral/case file will contain documentation establishing the reason that an evidentiary medical examination of the child was obtained:

1. Parental consent.

2. Court order.

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

D. **Investigatory School Interview:**
The child's referral/case file will contain documentation establishing the reason for the interview of the child at school.

1. Parental consent.

2. Exigent circumstances.

3. Investigatory school interview warrant.

4. Other court order.

E. **Court Reports:**
Document the authority of actions taken, if a court-ordered warrant was obtained.

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

REFERENCES

Attachments and CWS/CMS Data Entry Standards

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

None.

Hyperlinks

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

- CFS P&P Structured Decision Making (D-0311)
- CFS P&P Abuse Investigations—Practice Guidelines (A-0412)
- CFS P&P Family Maintenance Six Month Review Report (G-0315)
- CFS P&P Dependency Intake (A-0502)
- CFS P&P Child Abuse Services Team (CAST) (A-0401)
- Juvenile Court Administrative Order No. 12/009

Other Sources

Other printed references include the following:

None.

FORMS

Online Forms

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

Form Name	Form Number
Application and Declaration in Support of Warrant	F063-25-589
Court Findings and Orders Authorizing Warrant	F063-25-590
Notice of Intent Not to Commence Juvenile Court Proceedings Under WIC § 300	F063-25-591
Application to Recall/Return Warrant	F063-25-611
Declaration to Support Warrant	F063-28-39
Bench Warrant (Child)	F063-25-701
Bench Warrant (Adult)	F063-25-707

Application and Declaration in Support of Warrant—Request for Night Service	F063-25-708

Hard Copy Forms

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

Form Name	Form Number
None.	

CWS/CMS Forms

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

Form Name	Form Number
None.	

Brochures

Brochures to distribute in conjunction with this procedure include:

Brochure Name	Brochure Number
None.	

LEGAL MANDATES

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

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

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

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

public assistance, or whether a non-offending caregiver can provide for and protect the child and whether the alleged perpetrator of abuse/neglect agrees to leave the residence.

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

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

WIC § 340 gives Court authority to issue protective custody warrants when Court believes that the circumstances of the child's home environment may endanger his health, person, or welfare, or whenever a dependent child has run away from the court-ordered placement.

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

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

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

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

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

42 U.S. Code § 1983 mandates that persons, acting under authority of law, who deprive citizens of rights secured by the Constitution and laws will be liable to the party injured.

People v. Kimble (1988) 44 Cal.3d 480, 494 provides that a warrant application must include some factual basis (i.e., good cause) for the conclusion that the greater intrusiveness of a nighttime search is justified by the exigencies of the situation.

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

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

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

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

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

Doe v. Lebbos (2003) 348 F .3d 820 9th Cir. found that a social worker cannot obtain an investigatory medical examination of a suspected child abuse victim without parental consent, a court order, or exigent circumstances. Law enforcement placed a four-year-old child into protective custody based on suspicion of neglect by the father and the child's complaint of vaginal pain. A 300 petition was filed and the child was subsequently taken to the hospital eight days later for a sexual abuse exam. The Court ruled that the father's Fourth and Fourteenth Amendment rights were violated in that although the child's medical condition needed prompt treatment, it was not an

urgent problem requiring immediate attention and there was no risk of losing crucial evidence. However, the Court also found that the social worker's conduct was not unreasonable in that a petition had been filed alleging sexual abuse, the child was experiencing vaginal pain and discharge, and the social worker had construed the Court's inquiry about whether the child had received medical care as authorization to obtain the exam.

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

Franet v. Alameda County (2008) 291 Fed.Appx 32 9th Cir. found that social workers cannot remove children without a warrant except in emergency circumstances. It is proper for the jury to decide whether a reasonable social worker would have seized the children. When the County had seized 5000 children without warrants during a period of a few years, a jury may decide whether the County had failed to train its social workers on what constituted an emergency and/or whether the county had an unconstitutional policy of seizing children.

Greene v. Camreta (2009) 588 F .3d 10118 ruled that the decision by a social worker and law enforcement to interview a child in a private office at her school – without a warrant, court order, exigent circumstances, or parental consent – constituted an unreasonable seizure and therefore violated the child's constitutional rights.

Camreta v. Greene (2011) 131 S. Ct. 2020 vacated the 9th Circuit's ruling in *Greene v. Camreta* on a technicality. The Supreme Court did not reach the issue of whether an interview of a child in a private office at her school without a warrant, court order, exigent circumstances, or parental consent was constitutional. The law is, therefore, not clearly established in regard to future interviews of children at school.