



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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December 4, 2017

ALL COUNTY INFORMATION NOTICE NO. I-79-17

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
 ALL COUNTY PROBATION OFFICERS
 ALL COUNTY BOARDS OF SUPERVISORS
 ALL COUNTY CHILD WELFARE DIRECTORS
 ALL CHIEF PROBATION OFFICERS
 ALL CHILD WELFARE SERVICES PROGRAM MANAGERS

SUBJECT: **DECRIMINALIZATION OF PROSTITUTION AND LOITERING CHARGES FOR CHILD VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION**

REFERENCES: [SENATE BILL \(SB\) 1322 \(CHAPTER 654, STATUTES OF 2016\);](#)
[PENAL CODE SECTIONS 647\(b\), 653.22\(a\) AND 11166;](#)
[WELFARE AND INSTITUTIONS CODE \(WIC\) SECTIONS 206,](#)
[300, 305, 309, 319, 601 AND 602; MANUAL OF POLICIES AND](#)
[PROCEDURES \(MPP\) SECTIONS 31-101.4, 31-110.4, 31-115.12](#)
[AND 31-125.1; ALL COUNTY LETTER \(ACL\) NO. 17-28 DATED](#)
[MAY 3, 2017; ACL NO. 17-85 DATED OCTOBER 24, 2017](#)

The purpose of this All County Information Notice is to inform counties of the changes in California state law initiated by [Senate Bill \(SB\) 1322](#). These statutory changes promote a culture shift in recognizing that children victimized by commercial sexual exploitation, who were previously criminalized, are victims of child abuse and should be treated as such.

Background

Prior to SB 1322, a child victim of commercial sexual exploitation could be arrested, detained in juvenile hall, and prosecuted for prostitution or prostitution-related loitering offenses, even though the child could not legally consent to sexual intercourse and was the victim of exploitation, a form of child abuse.

SB 1322 amended [Penal Code sections 647\(b\) and 653.22\(a\)](#) to prohibit the arrest or prosecution of a child under 18 years of age for crimes of soliciting or engaging in any act of prostitution for money or other consideration, or loitering with the intent to commit an act of prostitution. SB 1322 instead specifies these children may be adjudged dependent children of the court pursuant to [WIC section 300\(b\)\(2\)](#), and may be taken into temporary custody pursuant to [WIC section 305\(a\)](#).

Temporary Custody of a Commercially Sexually Exploited Child by a Peace Officer

In accordance with WIC section 305(a), a peace officer who encounters a child victim of commercial sexual exploitation (CSE) can take the child into temporary custody if they have reasonable cause to believe the child is described by WIC section 300 and:

- 1) The child has an immediate need for medical care, or
- 2) The child is in immediate danger of physical or sexual abuse, or
- 3) Leaving the child unattended poses an immediate threat to the child's health or safety. If the parent or guardian of the youth cannot be contacted, the officer must notify a social worker in the county welfare department to assume custody of the child.

Furthermore, under previously existing law codified in WIC section 305(c), in order to protect a child, a peace officer may take into temporary custody a dependent child of the juvenile court, or a child whom an order was made under [WIC section 319\(b\)\(3\)](#) (detention of the child), when the officer has reasonable cause to believe the child has left any court-ordered placement. This circumstance applies when a peace officer encounters a commercially sexually exploited child who has run away or is missing from their court-ordered foster care placement.

When the social worker is notified and assumes care of a child who has been taken into temporary custody by a peace officer under WIC section 305, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody, as required by [WIC section 309](#). The social worker must determine whether the child may be released to their parent or guardian, or responsible relative, or if continued detention for the protection of the child in an appropriate placement is necessary.

In accordance with [WIC section 206](#), a child taken into custody and alleged or adjudged to be within the description of WIC section 300 shall be provided with separate facilities from minors alleged or adjudged to be within the description of [WIC sections 601](#) or [602](#), except as provided in WIC section 16514. Furthermore, facilities for minors alleged or adjudged to come within section 300 must be non-secure as defined in WIC section 206.

Peace Officers' Mandated Reporting of Child Sexual Exploitation and Required Response by the County Child Welfare Agency

In addition to any contacts or reports required by law enforcement to the county child welfare agency under any existing county or local interagency protocols, a peace officer must make a mandated report of suspected child abuse or neglect in accordance with [Penal Code section 11166](#). Child welfare agencies are required by [MPP section 31-115.12](#) to immediately conduct an in-person investigation of a law enforcement referral stating a child is at immediate risk of abuse, neglect, or exploitation. The social worker must also immediately conduct an in-person investigation if the Emergency Response Protocol indicates the existence of a situation of imminent danger to a child, or if the social worker determines a child referred by a law enforcement agency is at immediate risk of abuse, neglect, or exploitation.

For all other law enforcement referrals which allege abuse, neglect, or exploitation, the social worker shall conduct an in-person investigation either immediately or within ten calendar days of receipt of a referral, as appropriate, in accordance with [MPP sections 31-101.4 and 31-110.4](#) and the Emergency Response Protocol. The county social worker initially investigating the referral shall determine the existence of, or potential for, any condition(s) which places the child at risk and would cause the child to be described by WIC section 300, in accordance with [MPP section 31-125.1](#). This includes whether a child victim of CSE is described by WIC section 300(b)(2) (parent was unable or unwilling to protect the child) or any other relevant subdivision of WIC section 300, such as 300(c) (serious emotional damage), 300(d) (sexual abuse) or 300(g) (child left without provisions for support). The social worker must conduct an investigation that meets the requirements of MPP section 31-125, including in-person contact with the child and at least one adult with information regarding the abuse or neglect allegations. However, no response is required if the social worker determines through the Emergency Response Protocol that an in-person investigation is unnecessary and the law enforcement agency has already investigated and determined there is no indication of abuse or neglect by a member of the child's household. For clarification regarding Child Welfare's responsibility to investigate situations where parents are not directly involved in the child's exploitation, yet are unable to protect their children from CSE please refer to [All County Letter \(ACL\) No. 17-85](#). For more information on timely investigations of child abuse and neglect please refer to [ACL No. 17-28](#).

Cross-System Collaboration

As a result of the changes implemented by SB 1322, counties will need to continue building cross systemic collaboration between law enforcement, probation departments, and child welfare agencies. Increased communication and information sharing is essential in establishing strong multidisciplinary efforts that will best support the

vulnerable population of commercially sexually exploited children (CSEC). Best practice recommendations from the California Department of Social Services concerning SB 1322 will be forthcoming in future communications, including addressing harm reduction informed policies and protocols that support the engagement of CSEC.

Contact Information

If you have any questions, please contact the Child Trafficking Response Unit, within the Child Welfare Policy and Program Development Bureau, at (916) 651-6160 or at CSECProgram@dss.ca.gov.

Sincerely,

Original Document Signed By:

MARY SHEPPARD
Branch Chief
Child Protection and Family Support Branch