

## DSS Policy and Procedure Guide

Division 03: Child Welfare

Chapter 02: General Administration

### Item 028: **Best Practice When Interviewing Children**

Suggested changes send to: [DSS PSOA](#) Mailbox

Issued: **November 10, 2015**

References: Penal Code [11174.3](#); Welfare and Institutions Code [305](#), [328](#); [Camreta v. Greene](#); PPG 03-01-001, PPG 03-06-017; County Counsel Manual

Replaces Issue: New

[Parental Consent](#) / [Exigent Circumstances](#) / [Court Order](#) / [Interviewing Children at School](#) / [During the Interview](#) / [Attachment A](#)

### **Preamble**

Child Welfare Policy and Procedure Guides (PPG) are meant to be used as tools to relay best practice and staff expectations. It is understood that specific case scenarios may not always align themselves with the stated practices and that at all times what is of paramount importance is the Safety and Well-being of the children we are charged to protect.

### **Policy**

The Department of Social Services (DSS) Child Welfare staff shall interview families in accordance with the law, legal precedents, and best practice.

### **Purpose**

Although the [Camreta v. Greene](#) ruling regarding fourth amendment search and seizure was eventually overturned by the United States [Supreme Court](#), it opened a discussion as to what should be the legal and best practice requirements when interviewing children. This PPG will help Child Welfare staff determine the best protocols when interviewing children.

### **Procedure**

#### **Interviewing Children in their Home**

A Social Worker (SW) is not allowed to enter a family home (whether or not the child is a dependent) without at least one of the following:

- Parental consent or consent from an adult who lives in the home
- Exigent circumstances
- A Court order, such as a Protective Custody Warrant (PCW)

The SW shall narrate in CWS/CMS which form of entry was obtained and how.

All contacts will be narrated in accordance with PPG 03-01-001, *Mandatory Face-to-Face Contacts/Documentation Timeframes*.

### Parental Consent

When responding to the family home, unless there are extenuating circumstances, the assigned SW should first attempt to contact the family without law enforcement and obtain parental consent to 1) enter the home and 2) interview the family in the home. This will not only help with the interview, but also in building the relationship between DSS and the family.

A person other than the parent or legal guardian may consent to the SW entering the home if the person has “apparent authority” to do so. Generally, that person must live at the residence or appear to reside there, be age 18 or older, and possess competent mental ability and language skills. The SW must have a *good faith belief* that the person has authority to consent to entry.

Actual consent includes:

- Verbal consent (i.e. “yes, you may come in,” or “yes, you may inspect my child”).
- Consent obtained by duress or coercion is not valid consent.
- The SW is not required to inform the parent of their right to refuse consent. Ignorance on the part of the parent about the court order requirement does not nullify consent or equate with duress or coercion.

Implied consent includes:

- Is normally manifested by the behavior of the parent (i.e., a parent who waves you into the home after you ask to enter).
- SW should attempt to confirm the implied consent by asking something like, “You don’t mind if I come in, is that right?”
- A parent’s failure to object to entry/search is not sufficient for implied consent. There must be a demonstrative gesture.

**NOTE:** The SW must document in CWS/CMS who provided consent as well as the behavior of the parent or other adult that led them to believe the parent/other adult consented to entry into the home.

If a parent or another adult does not give consent to enter the home, the SW shall attempt the following:

- See child outside the home – ask to see the child and interview child outside the home (e.g. on the porch, at a local park, etc.).

- Observe the child from the doorway – ask to see the child from the doorway so you can assess the urgency of the situation.
  - Take a mental note of everything you can see (e.g., demeanor and physical condition of the child, condition of the home, demeanor and physical condition of the parent, demeanor and physical condition of the siblings or other persons in the home, etc.).
- Explain Entry Order Option – If the parent refuses to permit you to enter the home or speak with the child, inform the parent that you are required by law to investigate reports of suspected child abuse or neglect ([WIC 328](#)).
  - For example, you could explain: "I am from the Fresno County Department of Social Services. I am required by law to investigate reports of suspected child abuse and neglect? May I enter your home and speak to with the child?"
- Do not threaten the parent by stating that if you are not allowed to see or speak with the child, the law authorizes you to ask a judge to issue an entry order, and if the judge issues the order you will come back with the court order and law enforcement to enter the home.
  - For example, you should not state, "I am from the Fresno County Department of Social Services. I am required by law to investigate reports of suspected child abuse and neglect. If you do not permit me to see and speak with your child, the law authorizes me to ask a judge to issue a court order allowing me to enter your home and speak with the child. If the judge issues the order, then I will return with the order and the police. Would you prefer I return with the police and a court order?"
- Enlist the assistance of law enforcement – you may request assistance from a police officer or deputy sheriff to obtain valid consent to enter the home. Use a cell phone at the scene to contact law enforcement. The officer can determine whether the parent is on probation or parole and subject to a search and seizure order; they can also independently determine whether exigent circumstances exist to justify entry and can independently seek a search warrant if deemed appropriate.

### Exigent Circumstances

“Exigent circumstances” are those situations that require immediate aid or action to prevent harm. For a situation to be considered exigent, it must require immediate action on behalf of the SW to prevent the child from suffering any bodily injury (i.e. when you would call 911). If the SW can leave the scene to consult with their Social Work Supervisor (SWS) and then later decide to return and remove the child, *the conditions are not exigent*. The SW must be able to specifically articulate why there is reasonable cause to believe that a child is in imminent danger of abuse or neglect, and document these facts.

If a SW believes exigent circumstances exist, they should immediately contact the local law enforcement to assist in interviewing and possibly removing the child. Please refer to the County Counsel Manual for specific examples of exigent circumstances.

### Court Order

If after seeking the parent's consent and help from law enforcement the SW is still unable to interview the child, the SW may consider obtaining an order from the Juvenile Dependency Court. The Court Specialist Program Manager (PM) and SWS shall be provided with the information on the previous efforts and consulted on how to proceed. Please see "[Attachment A](#)" for how to request entry into the child(ren)'s home.

Once the Court Order has been signed, it is recommended the SW call law enforcement in order to assist in serving the order. Once served, the SW shall complete their investigation pursuant to PPG 03-03-008, *Assessment in Investigation of Abuse/Neglect Reports*.

### **Interviewing Children at School**

According to [PC 11174.3](#), a SW is allowed to interview a child regarding allegations of abuse or neglect on school grounds during school hours. The law does not distinguish between crisis and non-crisis referrals.

If the responding SW interviews the child(ren) at school prior to interviewing the parent(s), parental consent is not required.

The child is allowed to have a school staff person with them in the interview for support.

- The staff person is not allowed to participate in the interview and must keep the interview confidential.

The SW shall narrate in CWS/CMS that they asked the child if they wanted school staff to participate and the child's response.

Interviews at school should be kept to less than 30 minutes per child (given that the interviews are completed separately). If further information is needed from the child(ren), obtain permission from the parent, law enforcement, or Court, as appropriate (see previous section).

### **During the Interview**

Attempt to interview each child alone and away from the alleged perpetrator.

Advise the child that they are not in any trouble. Attempt to comfort them with small talk.

Advise the child that they can end or interrupt the interview at any time (i.e. if they want a drink of water, to use the restroom, take a break, etc.).

Use age and developmentally appropriate language.

Try to keep the interview as short as possible keeping in mind the attention span of the child being interviewed.

When the SW believes that there are compelling reasons to inspect a child for injuries without parental consent, the SW should ask permission from the child, if the child is old enough to understand the request, and narrate this in CWS/CMS.

When conducting the visual examination, the child's privacy is paramount. The age, gender and comfort level of the child, the location of the injuries, and the gender of the SW are all important in determining what constitutes an appropriate exam. The parent's and child's dignity are to be safeguarded. Clothing is lifted rather than removed, if at all possible. A parent is never ordered to strip a child. If a SW has questions about whether it is appropriate to examine a child for injuries, the SW should consult with his/her SWS. The SW shall narrate in CWS/CMS how the exam was completed and if any injuries were seen.

**“Attachment A”**

PETITIONER OR ATTORNEY (Name and Address):  Fresno County Department of Social Services 1404 “L” Street Fresno, CA 93721  TELEPHONE NO.: (559)-600-6400 FAX NO.	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO</b>  STREET ADDRESS: 1100 Van Ness Avenue, Second Floor, Room 200 MAILING ADDRESS: 1100 Van Ness Avenue, Second Floor, Room 200 CITY AND ZIP CODE: Fresno, California 93724-0002 BRANCH NAME: Juvenile Dependency Court	
CHILD(REN)'S NAME(S):	CASE NUMBER:
<b>APPLICATION AND DECLARATION IN SUPPORT OF:</b>  <input type="checkbox"/> <b>PROTECTIVE CUSTODY WARRANT</b> <input type="checkbox"/> <b>ORDER AUTHORIZING ENTRY INTO HOME</b> <input type="checkbox"/> <b>ORDER AUTHORIZING INTERVIEW OF CHILD</b>  <b>(Welfare and Institutions Code §§ 340, 328)</b>	

Petitioner,     (ER SW)    , declares as follows:  
 (Print Name)

**1. PETITIONER'S PROFESSIONAL QUALIFICATIONS**

I am employed by the Fresno County Department of Social Services (DSS) as a child welfare worker. By virtue of my education, training and experience I am qualified, authorized and currently assigned to conduct child abuse and neglect investigations under Welfare and Institutions Code §§ 300 and 328. I am currently assigned to investigate the case involving the child names above. I make this declaration in support of an application for:

- A protective custody warrant for the child(ren) under Welfare and Institutions Code § 340;
- An order authorizing entry into the child(ren)'s home to conduct a child welfare investigation under Welfare and Institutions Code § 328.
- An order authorizing interview of child(ren) pursuant to the Welfare and Institutions Code § 328. [Green v. Camreta (2009) 588 F.3d 1011.]

**2. CHILD(REN)'S STATUS**

- (a)  No petition has been filed, but there is reasonable cause to believe that the child(ren) may fall within Welfare and Institutions Code § 300.
- (b)  A verified original § 300 petition dated \_\_\_\_\_ has been filed with the Juvenile Court, **OR** will be filed concurrently with this Application, alleging that the child(ren) named above comes within the description of § 300 of the Welfare and Institutions Code and requesting

a hearing. A true and correct copy of the petition is attached to this declaration and is incorporated herein by reference. There is reasonable cause to believe that the circumstances of the child(ren)'s home environment and continuance in the home will endanger the child(ren)'s health, person or welfare.

- (c)  The child(ren) named above was/were declared a dependent child(ren) of the Juvenile Court on or about \_\_\_\_\_. A verified  § 387 supplemental petition or  § 342 subsequent petition dated \_\_\_\_\_ has been filed in Juvenile Court, **OR** will be filed concurrently with this Application, requesting a hearing. A true and correct copy of the petition is attached to this declaration and is incorporated herein by reference. There is reasonable cause to believe that the child(ren)'s home environment and continuance in the home will endanger the child(ren)'s health, person or welfare.
- (d)  The child named above was declared a dependent child of the Juvenile Court on or about \_\_\_\_\_. On or about \_\_\_\_\_ the child ran away from his or her placement (specify)
  - relative     non-relative extended family member     foster home
  - Foster Family Agency home     group home,

and the child's whereabouts remain unknown to petitioner's agency.

**3.  REQUEST FOR PROTECTIVE CUSTODY WARRANT**

Based on my investigation and the facts alleged in the attached, verified juvenile court petition, it is my professional opinion that the child(ren) should be placed into protective custody under Welfare and Institutions Code § 340 because:

- (a)  The child(ren) requires immediate medical care and there are no reasonable means by which the child(ren) can be protected without temporary removal from the physical custody of the parents or guardians;
- (b)  The child(ren) is in imminent danger of physical or sexual abuse and there are no reasonable means by which the child(ren) can be protected without temporary removal from the physical custody of the parents or guardians;
- (c)  The child(ren)'s physical environment poses an imminent threat to the child(ren)'s health or safety and there are no reasonable means by which the child(ren) can be protected without temporary removal from the physical custody of the parents or guardians;
- (d)  The child(ren) is suffering severe emotional damage and there are no reasonable means by which the child(ren) can be protected without temporary removal from the physical custody of the parents or guardians;
- (e)  See additional information supporting the need for protective custody described in Section 6 below.

**4.  REQUEST FOR ORDER AUTHORIZING ENTRY INTO HOME**

Based on my investigation and the facts set forth in Section 6 below, it is my professional opinion that there is reasonable cause to believe that the child(ren) is/are a person described by Welfare and Institutions Code § 300, and that entry into the home by DSS and/or law enforcement investigators is necessary under Welfare and Institutions Code § 328 in order to see and speak with the child(ren), to inspect the safety of the home, to determine whether child welfare services should be offered to the family and to determine whether juvenile court

proceedings should be commenced. It is also my professional opinion that the scope of the intrusion set forth in section 6 below is necessary to avert harm to the child(ren).

**5.  REQUEST FOR ORDER AUTHORIZING INTERVIEW OF CHILD(REN)**

Based on my investigation and the facts set forth in Section 6 below, it is my professional opinion that there is reasonable cause to believe that the child(ren) is/are a person described by Welfare and Institutions Code § 300, and that an interview of the child(ren) named above by DSS and/or law enforcement investigators is necessary under Welfare and Institutions Code § 328 in order to determine whether child welfare services should be offered to the family and to determine whether juvenile court proceedings should be commenced. It is also my professional opinion that the scope of the intrusion set forth in section 6 below is necessary to avert harm to the child(ren).

**6.  ADDITIONAL INFORMATION**

Include any additional information which supports this application, as well as information which describes family strengths and any exculpatory information. Summarize the safety issues as to why the PCW is being requested. Show a nexus between what is occurring and any immediate risk and/or danger. Attach additional pages if necessary.

Additional pages attached.

**7. VERIFICATION**

I declare under penalty of perjury that the foregoing, including any attachment, is true and correct to the best of my knowledge and belief and was signed at (city) Fresno, California on the following date.

**Date:** \_\_\_\_\_

\_\_\_\_\_  
Child Welfare Worker's Name (Print)

\_\_\_\_\_  
Child Welfare Worker's Signature

**Date:** \_\_\_\_\_

\_\_\_\_\_  
Court Specialist's Name (Print)

\_\_\_\_\_  
Court Specialist's Signature

**Date:** \_\_\_\_\_

\_\_\_\_\_  
Child Welfare Supervisor's Name (Print)

\_\_\_\_\_  
Child Welfare Supervisor's Signature

**FINDINGS AND ORDERS**

Based on the application presented to the Court by the social worker in this matter, the Court makes the following findings and orders:

- 1. There is reasonable cause to believe that the child is, or appears to come, within the description of Welfare and Institutions Code § 300; and
- 2. There is reasonable cause to believe:

(a)  **Protective Custody**

The child should be placed into protective custody because:

- (1)  The child(ren) requires immediate medical care and there are no reasonable means by which the child(ren) can be protected without temporary removal from the physical custody of the parents or guardians;
- (2)  The child(ren) is in imminent danger of physical or sexual abuse and there are no reasonable means by which the child(ren) can be protected without temporary removal from the physical custody of the parents or guardians;
- (3)  The child(ren)'s physical environment poses an imminent threat to the child(ren)'s health or safety and there are no reasonable means by which the child can be protected without temporary removal from the physical custody of the parents or guardians;
- (4)  The child(ren) is/are suffering severe emotional damage and there are no reasonable means by which the child(ren) can be protected without temporary removal from the physical custody of the parents or guardians;
- (5)  The child has run from a placement in which he or she was placed by the Juvenile Court.

(b)  **Entry into the Child(ren)'s Home**

Entry into the child(ren)'s home by DSS and/or law enforcement investigators is required pursuant to Welfare and Institutions Code § 328 in order for investigators to see and speak with the child(ren), to inspect the safety of the home, to determine whether child welfare services should be offered to the family and to determine whether juvenile court proceedings should be commenced.

(c)  **Interview Minor(s)**

Entry into the child(ren)'s school or other location where the child may be found by DSS and/or law enforcement investigators is required pursuant to Welfare and Institutions Code § 328 in order for investigators to see and speak with the child(ren), to determine whether child welfare services should be offered to the family and to determine whether juvenile court proceedings should be commenced.

**3. IT IS HEREBY ORDERED THAT:**

- (a)  **Protective Custody Warrant.** A protective custody warrant shall be issued for the child(ren) named above. Petitioner's agency and/or law enforcement are authorized to enter the child(ren)'s home in order to serve the warrant.
  
- (b)  **Entry into Home.** Petitioner's agency and/or law enforcement are authorized to enter the child(ren)'s home, and the child(ren)'s parent, guardian or caretaker shall immediately permit DSS and/or law enforcement investigators to enter the child(ren)'s home, in order to see and speak with the child(ren), to inspect the safety of the home, to determine whether child welfare services should be offered to the family and to determine whether juvenile court proceedings should be commenced.
  
- (c)  **Interview Child(ren).** Petitioner's agency and/or law enforcement are authorized to enter the child(ren)'s school or other location and seize the child(ren) in order to see and speak with the child(ren) to determine whether child welfare services should be offered to the family and to determine whether juvenile court proceedings should be commenced.

Date:

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Judge of the Juvenile Dependency Court

**NOTICE**

- This warrant may be served any time of day or night.
- This warrant is null and void 10 Court days from the date of issuance.
- This warrant is null and void 12 months from date of issuance.