



Child Victim-Witness Protocol

by the
San Diego Regional
Child Victim-Witness
Task Force

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Periodic Review and Revision

All the agency members of the Task Force will review this document on an annual basis. Minor revisions and updates will be done as needed. Signatures of Agency Department Heads will not be required unless additions and revisions are significant or will require a discernible change in agency internal policies and procedures. This document will require signatures of Agency Department Heads if multiple agencies change leadership.

Dissemination of Protocol

This document will initially be duplicated and made available by disk by the Southern Child Abuse Training and Technical Assistance Center (SCATTA). Each agency will provide duplication and dissemination throughout their respective departments.

Training

Training about the Protocol will be offered initially by SCATTA. Additional training will be done by the respective agencies through their internal education departments.

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1. Policy Statement

1.1 Our Mission

The County of San Diego, and all of the incorporated cities located within, hope to assist all children, both victims and witnesses, who are exposed to any kind of abuse. The protocol is a collaboration of work by those in law enforcement, child protection, legal advocacy, mental and medical health, and the judiciary.

1.2 Goals

Minimization of further trauma to child victims/witnesses through a cooperative, multidisciplinary effort limiting the number of interviewers, the number of times the child is interviewed, and treating children with dignity and respect.
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The main body of the child victim-witness protocol addresses the preventable trauma that occurs when the victims or witnesses of child abuse are repeatedly interviewed. It must be remembered that the potential for emotional harm exists whenever a child is a victim or witness to any crime. This is especially true if the crime is a violent one. The dynamics of domestic violence are similar to those of child abuse. Experiencing or witnessing violence within the home can evoke feelings of fear, confusion, and guilt, which may be enhanced if the family is separated as a result of what the child may believe were his or her statements.

This protocol is intended to provide guidelines and assistance to those persons who come into contact with the child victim-witness. This includes those persons involved in cases falling under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.), wherein an Indian tribe may intervene and participate on the behalf of the eligible member (victim-witness) in a child dependency proceeding.

The suggestions in the protocol are offered not as the “be all and end all” in the child abuse field, nor would these guidelines apply in all circumstances. However, it is hoped that the sensitivity to which this protocol speaks will be applied to any situation where the child is a victim or a witness.

2. *Background*

May 1990

At a conference sponsored by the California Youth Authority (CYA) in association with the California Center for Judicial Education and Research (CJER) in May 1990, representatives from San Diego County traveled to Burbank, California, for a “Transfer of Knowledge Workshop” on children as victims and witnesses. As a result of that meeting, the Presiding Judge of the Juvenile Court asked those attending to meet again in San Diego to discuss current departmental practices in handling child victim-witnesses.

August 1990

On August 8, 1990, a working group was formed to prepare a protocol for dealing with child victims-witnesses. This document is a result of those efforts.

1994 to Present

The working group has reconvened annually since 1994, in a series of meetings to evaluate and modify the protocol. This revised protocol was completed in September 2000.

3. *Agency Roles and Descriptions*

3.1 Schools

Educators have regular contact with children outside the home and they are often the first persons to whom children disclose abuse. Since January 1, 1971, schools have been required by law to report all cases of suspected child abuse. As “child care custodians,” school employees are now actively involved in the identification and reporting of suspected child abuse.

After an abuse case has been filed, it is important that schools provide acceptance, support, consistency, and structure to these children.

3.2 HHSA: Childrens Services

The primary responsibility of Health and Human Services Agency (HHSA): Childrens Services is the protection of children from abuse, neglect, and/or exploitation by their parents or caretakers. HHSA: Childrens Services provides initial assessments and crisis intervention, and provides support services through voluntary contracts or court intervention to children and their families determined to be at risk.

The assessment includes relevant social, cultural and physical factors for each child in the case and the parents or caretaker. It includes interviews with alleged victims, siblings, parents, caretakers, witnesses, and anyone known to have relevant information. Social workers should consult with other professionals who can provide necessary expertise.

After assessing the risk to the child, a determination must be made regarding what services are needed and whether services are available which would allow the child(ren) to remain safely at home or with a relative. If services are not available or, even with available services, the child remains at risk of abuse, necessary actions such as out of home placement and/or Juvenile Court proceedings are initiated.

A case plan is developed for each family. The plan identifies services to reduce or eliminate the risk level, to safely maintain or reunite the families and/or recommend permanent plans for child(ren) [i.e. adoption, guardianship, or long term foster care].

3.3 Law Enforcement

San Diego County includes many different law enforcement agencies, both large and small. All are charged with the responsibility to investigate allegations of child abuse or other allegations of criminal conduct where children are witnesses.

Law enforcement’s direct involvement consists of protecting the child(ren) from additional trauma, determining whether there was a violation of law and, where there is a possibility of prosecution, investigating the case and presenting it to the District or City Attorney. Every effort is made to limit the number of interviewers and minimize the times the child is interviewed, while at the same time obtaining the evidence necessary for prosecution.

The Naval Criminal Investigative Service (NCIS) is the agency that investigates child physical and sexual abuse for the Department of the Navy and the Marine Corps. NCIS while conducting their investigation follows the same protocol and reporting procedure.

In addition to the investigative role, law enforcement (in particular the specialized child abuse units) plays a civic role in making presentations on the subject of child abuse to various community groups. The topics include child abuse in general, the mandatory reporting law, and investigative skills. Law enforcement also attends interdisciplinary meetings with various organizations in an effort to coordinate their mutual responsibilities with regard to these cases.

All law enforcement personnel receive basic training in their academies on the topics of child abuse and sexual assault. Investigators who are assigned to specialized child abuse units receive specialized training in child abuse to be aware of children’s developmental skills and to increase their sensitivity.

3.4 District Attorney

The District Attorney’s Office is the agency charged with the prosecution of all felonies committed in San Diego County and those misdemeanors committed outside the City of San Diego.

The Family Protection Division (FPD) of the District Attorney’s Office handles all felony criminal prosecutions of crimes involving child abuse including sexual molestation, physical abuse, neglect, and homicide. The FPD is comprised of attorneys, investigators, and investigative specialists. The cases are handled in a “vertical prosecution” format where one Deputy District Attorney (Deputy) is assigned the matter prior to case issuance / rejection and remains with that case for all court appearances and hearings. With some exceptions, the FPD handles those cases in which the victim is presently under the age of 14. Felony cases in which the victim is presently 14 years and older are assigned to the Superior Court Division and the branches of the District Attorney’s Office for review and prosecution.

The assigned deputies receive specialized training in child abuse prosecution including medical, psychosocial, and legal components. The Deputy will also provide legal assistance to law enforcement such as answering legal questions, assisting in the review of search and arrest warrants, or obtaining other information. The Deputy will also assist in the communications between other participants in the system including law enforcement, HHSA: Childrens Services, Center for Child Protection, County Counsel, the child’s attorney, and the therapist for the child and/or family.

3.5 City Attorney

The City Attorney of San Diego prosecutes misdemeanor child abuse and misdemeanor domestic violence cases. The Child Abuse / Domestic Violence Unit uses a vertical prosecution format. The Unit focuses on cases of actual physical or sexual abuse that do not rise to the felony filing standards of the District Attorney’s Office.

3.6 County Counsel

County Counsel, Juvenile Dependency Division, represents HHSA: Childrens Services in all juvenile dependency matters. In addition to representing HHSA: Childrens Services workers in court, County Counsel provides legal advice and screens cases to determine whether there is sufficient evidence to file a dependency petition. County Counsel represents HHSA: Childrens Services in all proceedings after the filing of a petition.

County Counsel Deputies receive specialized training in child abuse issues as well as in the presentation of evidence in court in a child abuse case. There is a team approach that allows for identification of cases for vertical handling. County Counsel Deputies also serve as facilitators in the communication process between all parties to the proceedings.

3.7 Public Defender

The Dependency Section of the Department of the Public Defender is comprised of experienced attorneys and investigators who represent children in juvenile dependency proceedings. Their role is to advocate independently on behalf of the child client.

These attorneys receive specialized training in child abuse litigation. Each attorney has background and experience in working with children and families; and is assisted in their work by investigators with degrees in social work or allied fields, who have significant experience with issues of child protection, family dynamics, and child development.

A deputy public defender is appointed to represent the child after a dependency petition has been filed. Once appointed, this same attorney remains on the case until termination of jurisdiction. The deputy public defender’s responsibilities include investigating the facts alleged in the dependency petition, representing the child in all juvenile court hearings, monitoring the provision of services, facilitating communication between all interested parties, and making recommendations to the court regarding placement, treatment, education, and other necessary services.

3.8 Superior Court Juvenile Division

The Superior Court Juvenile Division adjudicates dependency matters involving the protection of minors who have been abused or neglected; or have no parent or guardian willing or able to care for them.

A petition must be filed within 48 hours after taking a child into protective custody, or the child is released. Once the petition is filed, the detention hearing is held the next court day. The parent(s) enter a plea and temporary orders are made. A hearing is held 15 days later where jurisdiction is established or the matter is set for trial to determine jurisdiction.

The dispositional hearing is held once the jurisdiction is established. The social worker prepares a social study making recommendations. The court may follow the recommendations or modify them. The parties involved may also challenge the recommendations at the hearing.

Review hearings are set at six-month intervals. At 6, 12 or 18 months, a decision is made to return the child or select a permanent plan for long term foster care, guardianship, termination of parental rights, and adoption.

Attorneys appear for parents, children, and HHSA: Childrens Services. The child victims may have to testify in court.

3.9 Medical

All health providers who see children are mandated reporters of child abuse. Their reasonable suspicion of abuse in any given case requires them to file a report with a law enforcement agency or HHSA: Childrens Services.

Some health providers and facilities fulfill the requirements for performing definitive medical assessments for abused children. Physicians who provide forensic evaluations see their role as dual: 1) meeting the need of both the criminal justice and child protection systems by careful documentation of injuries, collection of evidence, and interpretation of findings; and 2) meeting the need of the child/adolescent victim and family by providing victim-sensitive, gentle examination,

explanation of findings (with law enforcement) when appropriate, STD and pregnancy prophylaxis and other medical follow-up as deemed appropriate, and referrals for mental health treatment.

The mandatory requirements for medically evaluating sexually abused children are set forth in Title 22 of the California Administrative Code; and further defined in the California Medical Protocol for Child Sexual Abuse, published by the State of California, Office of Criminal Justice Planning.

Professionally sanctioned standards for the medical assessment of physically abused, neglected, or emotionally abused children are set forth in the document “*Regionalization of Medical Services for Abused and Neglected Children*,” published by the California Medical Association, P.O. Box 7690, San Francisco, CA 94120-7690.

The referenced documents contain detailed medical standards, procedures, and protocols for the medical assessment of abused children. Two of the most important of these requirements are:

- A stated willingness of the health professional to testify in court when necessary;
- The presence of named, qualified, health personnel who are consultants for child abuse cases.

Facilities or providers not meeting these standards should not be used by law enforcement agencies or HHSA: Childrens Services for securing definitive medical assessment of abused or neglected children.

3.10 Kids in Court

The Kids in Court program, run by the Center for Child Protection, consists of two programs:

- **Juvenile Court:** Children who are to testify in Juvenile Court attend one session where they learn about the court personnel, see a courtroom and chambers, and meet a judge.

- Criminal Adult Courts: Children will likely testify before a jury in the presence of the perpetrator. Children who testify in adult criminal court attend four orientation sessions where they see a courtroom, learn about the process and meet a judge.

When children enter a courtroom to testify in a criminal proceeding, they come with many misconceptions and fears. They enter an adult arena that is intimidating and often overwhelming. Children's Hospital's Center for Child Protection, in conjunction with the District Attorney's Family Protection Division, offers a program to help reduce the anxiety of testifying and to give the child some control and mastery in this unfamiliar setting. The project cost is funded by a grant from the Office of Criminal Justice Planning.

4. Schools & Other Mandated Reporters

4.1 Schools

4.1.1 Site and System Coordination

Each school site needs a method for identifying and reporting suspected child abuse cases. The following areas should be addressed when developing a system:

- Training all staff in the legal requirements of identifying and reporting child abuse.
- Designating appropriate staff member to coordinate suspected child abuse cases and another as an alternate to assist, in the absence of the primary staff coordinator.
- Provisions of a quiet, private place to listen to and document the child’s disclosure, and complete the report form.
- Clarification of school personnel roles (e.g., child care custodians), to facilitate information sharing between the school and the investigating agencies.

4.1.2 The Identification Process

School personnel should be familiar with the signs of the four basic types of abuse in order to readily recognize them in children at school.

- Physical Abuse
- Neglect
- Emotional Abuse
- Sexual Abuse

4.2 The Law and Reporting Procedures

California state law requires all school personnel to make a report if they reasonably suspect or have knowledge that abuse/neglect has occurred. Failure of the “child care custodian” to report known or suspected child abuse/neglect, is a misdemeanor punishable under California state law.

4.2.1 Steps to Take

Listen Carefully	When it appears that a child is disclosing information that may be considered abuse or neglect, the staff member should listen carefully at that moment. Provide a quiet, private place when possible in order to facilitate conversation and accurately identify and document the abuse or neglect.
Questions & Tone	Restrict questions to those necessary to complete the required reporting form. Listen openly and speak in a positive tone at the child’s level of understanding.
Verbal Support & Reassurance	Communicate support and reassurance to the child. It is important to make clear to the child that the alleged abuse was not his or her fault.
Contact	The child abuse site coordinator (or the alternate) for assistance.
Complete Report	Complete the one-page report form provided by the HHSA: Childrens Services with the coordinator’s help.
Notify	The Child Abuse “Hotline” (858/560-2191) and local law enforcement so they can determine if the child can safely return home.
Send	Written report to appropriate agency within 36 hours.

Upon receiving the information, HHSA: Childrens Services or law enforcement may send an investigator to the school site to interview the child. It is not within the law for school personnel to conduct or sit in on the interview; school staff may be present during the investigative interview only if the child makes a request for their attendance. Staff’s role is to document information and support the child during this process.

Parents or other school personnel should not be notified of the report. The agencies that were notified have the responsibility for doing this. Staff should continue to provide reassurance to the child but further questions about the abuse should not be asked. This has been known to add to the emotional strain the child is already under.

School personnel have many legal rights and constraints as participants in this process. It is important to be familiar with all of them.

4.3 Other Mandated Reporters

All other mandated reporters as delineated in the California State Child Abuse Reporting law have the legal duty to report suspicion of child abuse and neglect. Other mandated reporters (PC § 11166) include, but are not limited to, the following: child care custodians, health practitioners, employees of child protective agencies, child visitation monitors, firefighters, animal control officers, humane society officers, commercial film or photographic print processors. The steps outlined previously in this section (4.1 Schools and 4.2 Law and Reporting) should be followed.

At no time should a mandated reporter assume an investigative role and attempt to obtain a detailed or extensive history of abuse or determine if the information presented is valid. The reporter should only obtain enough information to report “suspicion” and does not need to provide proof.

5. *Initial Contacts*

5.1 Introduction

The Investigator must be constantly alert to the possibility of reintroducing some of the very elements that contributed to the initial trauma for the child. Abusers have been known to dress as uniformed law enforcement officers, health workers, and religious figures, or use some of the common implements of those occupations (e.g., handcuffs, firearms, hypodermic syringes, and religious symbols). Unfortunately, individuals actually in these fields have also abused children.

Investigative Tools such as video or Polaroid-type cameras may have been used during the commission of the offense. Interviewing a child in his or her bedroom, in an attempt to gain privacy, may in reality be returning with the victim to the scene of the crime. The display of these items or figures, or reintroducing other elements of the offense, by professionals who are trying to build trust, may further traumatize victims.

Everyone working with children during the investigative and recovery phases must be sensitive to the potentially devastating impact that the re-emergence of these details may have for the child. Revictimization may not only intensify the trauma to the victim or witness, but may also create behavior that acts as an additional barrier to successful investigation or intervention. This is not to deny the investigator the use of often very necessary tools, however, the presence of a negative reaction by the victim may result in a need to modify the investigative process.

Good Investigation includes a joint response and a single interview conducted by law enforcement and HHSA: Childrens Services. Together they determine an interview strategy and direction. While both parties need to know the circumstances of the abuse, Protective Service Workers need additional information to determine the proper placement for the child’s safety.

There are times when joint response should not occur. In emergency situations, law enforcement may arrive first at the scene and HHSA: Childrens Services is notified later. There are other occasions when there is no protective issue, and law enforcement is the only responder. There are also cases where HHSA: Childrens

Services is the only agency to respond. This may occur when there is already an active child protection case and/or when the allegation does not require a law enforcement response.

All children who have contact with the alleged perpetrator should be interviewed to assess future risk and determine if they have been victimized. It is incorrect to assume that because the original allegation involved a female victim that only girls were abused and vice versa. Boys frequently are victims and are even more reluctant to initially disclose abuse.

If a child has not been taken into protective custody prior to coming to Children’s Hospital, the consent of a parent or guardian must be obtained before a child is examined or interviewed in a non-emergency situation.

Lack of staff and large case volume should not prevent a multi-disciplinary initial response.

5.2 Law Enforcement

The vast majority of initial law enforcement contacts with victims of child abuse are made by uniformed patrol officers. Departmental Policies and Procedures dictate how different types of investigations are worked. The application of this protocol requires tasks to be handled by appropriate officers as dictated by Department policy.

5.2.1. *Mandated Reporting Requirements*

The State of California has mandated reporting requirements for child abuse cases in California Penal Code §§ 11165 through 11174.5. If the law enforcement agency received the report of child abuse from HHS:A: Childrens Services, then the officer does not need to fill out State Form SS-8572, nor cross report the allegation to HHS:A: Childrens Services. It is the officer’s responsibility, however, to ensure that these forms have been completed and notifications conducted.

5.2.2 *Initial Contact*

The initial contact may take place in the victim’s home, at a school or day care center, a hospital, or at any number of other sites. As with any situation that may involve physical injury, the officer must first decide if the child needs immediate medical care.

5.2.3 *Obtaining Information*

A Protective Service Worker, parent, or teacher, may have already received some of the required information from the child. This information should be obtained and documented, if possible, before interviewing the child. These individuals may not have acquired all of the facts necessary for a criminal investigation; however, check with them first as the fewer times a child is asked the same questions, the less traumatized the victim. If you are the first person to interview the child, please refer to the questions suggested in Section 5.3, HHS: Childrens Services, beginning on page 15 of this protocol.

5.2.4 *Follow-up by Detectives and/or Social Workers*

If the case will be investigated by a detective, much of the required information must be obtained without re-interviewing the child. Basics such as names, addresses, and phone numbers are needed; but only three other facts are necessary for the report. These are:

- Jurisdiction
- Statute of limitations
- The basic elements of the crime

The child will be asked for details at a later time by a Protective Service Worker and/or a detective. It is very difficult and traumatic for children to have to relate these events repeatedly. If the officer or Protective Service Worker can determine that a crime has occurred *by speaking to others*, then he or she should do so.

5.2.5 *Evaluating Protective Issues*

The officer, either alone or with a Protective Service Worker, must also determine whether or not there is a protective issue for the victim and other children in the home. If leaving the children in their current situation would put them at risk, the officer **MUST** take them into protective custody per Welfare and Institutions Code §300.

Children taken into protective custody should be taken to:

- **Polinsky Children’s Center**
- **Other designated receiving homes**
- **Released to a Protective Service Worker**

5.2.6 *Evidence, Documentation, Instrumentalities of the Abuse*

It is important for the officer to be aware that *evidence of the abuse* may exist. In physical abuse or neglect cases handled by the field officer, *immediate documentation* of visible injuries or conditions is necessary (e.g., 35mm photographs, detailed descriptions). *Collect instrumentalities of the crime* (e.g., belts, spoons, lubricating jelly, etc.) for evidence. In sexual abuse cases, the evidence of a molest may only be discernible by an experienced expert. An interview by a forensic interview specialist and/or an evidentiary examination may be warranted. Physical evidence from a sexual abuse victim, including photographs, will be collected by medical personnel only. A physical screening exam conducted by hospital personnel is available to provide documentation in physical and neglect cases. Lawfully seized evidence is extremely important and can be used to corroborate the victims/witness’ statements.

5.3 **HHSA: Childrens Services**

Protective Service Workers make several assessments and decisions during the initial response to a child abuse referral. These decisions balance the protection of the child against the preservation of the family. Critical to the decision making process is the assessment of existing or potential future harm to the victim and siblings.

All attempts should be made to coordinate the first response interview with law enforcement in cases of physical abuse, sexual molest, and severe medical neglect.

5.3.1 Need for Immediate Medical Attention

The first assessment must be whether there is a need for immediate medical attention. In the absence of obvious injuries, and where recent injury is suspected, questions such as the following may be asked:

- Do you hurt anywhere (“*owie*”, *pain*)?
- Are you / have you been bleeding?
- Do you have any cuts or bruises?
- Are you dizzy?
- Have you vomited?
- Can you see okay (*blurred vision*)?

5.3.2 Information to Determine Intervention or Services Needed

The social worker must decide what, if any, intervention or services would provide safety to the child(ren) and eliminate the need for removal. The social worker will need to have certain information in order to make this decision. However, the social worker need not be the one to obtain the information. In a joint interview, some of the information may be obtained by law enforcement while the social worker obtains other information. Where it appears that the children may be going to a medical facility, some of the information may be obtained by medical personnel.

A. Determining the Level of Risk Present

The following information needs to be gathered to determine the level of risk present. Who obtains it, and from whom, can be decided in a collaborative effort.

- What happened? (What was the abuse?)
- Who caused it?
- Who was present?

- When did it occur (date, time)?
- Who did you tell?
- When did you tell?
- Where did it occur? (Be specific; where in the home?)
- What instrument was used? (Hand, object, etc.)
- Where was the non-perpetrating caretaker?
- What action was taken by the non-perpetrating caretaker when the abuse was discovered?
- How soon after the incident was discovered did the non-perpetrating caretaker take action?
- Did the non-perpetrating caretaker have knowledge of this abuse or past abuse?
- Should / could they have known?
- What agencies were contacted?
- What was said to you by the alleged perpetrator, before, during, and after it occurred?
- What other persons were informed of the abuse (girlfriend, aunt, teacher, etc.)?
- What was going on before the abuse occurred?
- How did it occur?
- How often does this occur (history)?
- Are there other children in the home?
 - Were they abused?
 - Did they know of the abuse?

After obtaining the above information, as well as any spontaneous statements by the victim and witnesses, the level of risk present is determined.

B. Determining the Degree and Method of Intervention

Next, the degree and method of intervention must be determined. The immediate assessment must address the following:

- Can the victim and other child(ren) remain in the home with / without services?

- Is there a need for removal of the child(ren) to a safe / secure setting (i.e., Polinsky Children’s Center)?
- Are there removal alternatives to protective custody (i.e., temporary stay with relative, restraining order, etc.)?
- Who does the parent express concern for? (The victim, alleged perpetrator, him or herself?)

To determine the answers to these questions, the social worker should interview the other children and ascertain the non-perpetrating caretaker’s willingness and capability of protecting the child from future harm.

C. Making the Decision to Remove Child or No

The decision to remove a child from his/her own home should be based on future risk to the child. Some considerations are:

- Does the caretaker believe the child?
- Is there alcohol or other drug use?
- Is there financial dependency?
- Has the non-perpetrating caretaker attempted to separate previously?
- Are there additional stresses?
- Is there cooperation?
- Is there denial regarding the perpetrating caretaker’s role in the abuse?
- If the non-perpetrating caretaker knew of the abuse, what action was taken to protect the child, or the perpetrator?
- Does the non-offending caretaker see him or herself as the victim rather than the child; or see the child as the offender?
- Is there an emotional dependency on the alleged perpetrator?
- Is there a support person that the non-perpetrating caretaker can use?
- What does the child want?

The decision to leave a child in the home should not be influenced by the temporary incarceration of the offender. The existence of a restraining order, in and of itself, does not guarantee no contact. There must be a parent or caretaker with the capability to protect the child, not blame the child, accept responsibility, and be able to conceptualize and follow a protection plan.

D. Subsequent Assignment of Another Social Worker to Case

If another social worker is assigned to the case following the initial intervention, this worker should avoid re-interviewing the child(ren) until they:

- Talk with the initial responder
- Review all written narratives
- View the video of the evidentiary interview or
- Review results of the evidentiary exam with the physician.

This will ensure that only questions **not** asked by previous investigators or unanswered questions are asked.

E. Referral with No Physical Evidence or Disclosure

In some cases where a report of abuse has been made and there is no physical evidence and/or disclosure by the child(ren), but the child is exhibiting concerning behaviors, it may be appropriate to refer the child(ren) for an assessment to determine if therapy is needed.

6. Investigations

6.1 Law Enforcement

The successful criminal investigation of child abuse cases requires journeyman investigative skills and an awareness of the special features of these incidents which include:

- Working within a multidisciplinary framework.
- Recognizing the potential for the investigative process to re-traumatize the child/victim.

The detective should keep the number of interviews with the child(ren) to a minimum. This may often be accomplished by joint interviewing with the Protective Service Worker.

6.1.1 Follow-Up Interview

If a follow-up interview is necessary the detective should not re-interview a child victim until he or she first:

- Talks with the initial responder;
- Reviews all written narratives;
- Views the video of the evidentiary interview and/or
- Reviews the results of the evidentiary exam.

Thus ensuring unanswered questions are asked and that they only ask questions not asked by previous investigators.

6.1.2 Minimizing Multi-Discipline Conflicts

A. Procedural Conflicts

The chief concern of both the law enforcement detective and social worker should be the welfare of the child(ren). However, each discipline's investigative focus, be it dependency or prosecution, has its own set of time

constraints and legal requirements. Procedural conflicts can result, impacting not only the investigation, but also the emotional well-being of the child(ren). Upon receiving a case for investigation, the detective should immediately contact HHSA: Childrens Services to determine their involvement. Once the investigator contacts the Protective Service Worker, most potential conflicts can be mutually resolved.

Some fundamental steps can be followed by the investigator whether the case involves neglect, physical, and/or sexual abuse. If a protective issue exists, the involvement of HHSA: Childrens Services should be confirmed and the extent of its involvement determined. The detective and the Protective Service Worker should discuss the case, particularly areas where their respective investigations are likely to overlap. If the Protective Service Worker is going to contact the suspect, the PSW should be asked *not* to disclose any information regarding evidence (e.g., videos, magazines, photographs, weapons, or other instrumentalities of the crime).

The Protective Service Worker may also be able to provide the detective with copies of notes or reports that might be valuable to the criminal case in terms of not duplicating investigative efforts or victim interviews. If the detective can reciprocate in this sharing of information, a strong foundation of professional cooperation can be laid for future investigations.

B. Evidentiary Interviews - Physical Exams

Decide, based in part upon the criteria set forth in Section 6.3 in this protocol, if a videotaped evidentiary interview and/or screening physical examination is warranted for the criminal investigation. In many cases, the interview can be coordinated so that both the investigator and the Protective Service Worker can observe it. The supervisor of the appropriate prosecuting agency should be notified of the interviews time and location, so that the assigned prosecutor may attend. The investigator should arrange to receive copies of the videotaped interview, and evidentiary medical reports.

In cases where a videotaped evidentiary interview is not conducted, videotaping the investigative interview is suggested because it decreases the number of future interviews for the child.

During this time frame the investigator can interview witnesses and give appropriate referrals for community resources that may meet the needs of the victim and family impacted by the incident.

6.1.3 *Multidisciplinary Response*

The success of child abuse investigations can be greatly enhanced if all of the disciplines involved can remember what they have in common instead of their professional differences. The results include successful prosecution, minimization of unnecessary trauma, and a healthier, safer environment for the child(ren).

6.2 HHSA: Childrens Services

Following the Protective Service Worker’s initial contact, an assessment of future risk to the child(ren) can often be determined for the victim as well as any siblings. Therefore, a good and thorough initial interview is an essential part of the investigation.

6.2.1 *Subsequently Assigned Protective Service Workers*

Protective Service Workers assigned to the case subsequent to the initial interview should view videotapes, read reports, and/or interview potential witnesses. Written reports and opinions outlining their contacts should be secured during the investigative stage. Additional interviews of children (victims and/or siblings) regarding the allegation should only be conducted if the information needed is not included in the tapes, reports, initial interview by the social worker, or interviews by other professionals.

If the initial interview did not include the following parties, then the current Protective Service Worker should conduct interviews with:

- The reporting party.
- Other possible victims.
- All household members.

The same criteria, as outlined under Section 5 Initial Contact, should be followed. When appropriate, the social worker should consult with other professionals who can provide necessary expertise.

6.2.2 *Subsequent Interviews*

If the initial interview / contact did not include a Protective Service Worker, and the case has been assigned to a law enforcement child abuse detective, coordination of subsequent interviews with victims, siblings, alleged perpetrators, and parents is essential. If law enforcement is unable to coordinate interviews in a timely manner and children are believed to be at risk, it may be necessary to proceed independently.

It is the responsibility of each social worker handling the case to independently assess the risk of the child. After reviewing all of the information, if the investigating social worker believes the existing plan (i.e., in-home) is not appropriate, review the previous decision with supervisors and take the necessary action to protect the child.

6.2.3 *Active Cases ... On-Going Assessments*

Protective Service Workers should conduct reviews of the current risk on all active cases, based on the child’s age and severity of the original allegations.

These reviews should include looking at:

- The status of the original allegation.
- The appropriateness of the original case plan designed to reduce or eliminate the risk.
- The identification of any new allegations which would necessitate a change in the case plan.

When new allegations are made, or variables changed which were a consideration in the development of the original case plan (i.e., grandmother is no longer living in the home), then procedures outlined in the above and in Section 5 Initial Contact, should be followed.

Repeating initial interviews with the victims and siblings regarding the original allegations should not occur. Protective Service Workers should review all written materials and view videotapes of the victim interview (if available) when necessary.

6.2.4 *Service Plan Implementation*

In any case where services are being delivered (i.e., psychological evaluation, out-of-home care, in-home support services), and there is a “need for the provider to know” the specific circumstances of the allegations, the Protective Service Worker should evaluate whether or not a viewing of the videotape of the victim interview (if available) or the sharing of detailed information (verbal or written) is appropriate. Re-interviewing the child should be avoided whenever possible.

6.3 Forensic Evaluations

Forensic evaluations generally include both a videotaped forensic interview by a forensic interview specialist and a physical examination by qualified medical personnel.

6.3.1 *The Forensic Interview*

The forensic interview should occur:

- To gather information regarding an incident of physical abuse, sexual abuse, or severe neglect.
- Up to age 13.
- Adolescents between the ages of 14 and 17 can be interviewed at the discretion of the requesting agency.
- For both child and adult developmentally disabled victims.
- Where communication barriers including hearing, vision, verbal handicaps or language differences exist.
- When a young child has been a witness to a sibling’s abuse.
- When a young child has been witness to a violent crime.

- When a young child has been witness to a homicide/potential homicide.
- When a young child has been witness to serious domestic violence incidents.

6.3.2 *The Clinical Forensic Physical Examination*

The law enforcement jurisdiction in which the incident is alleged to have occurred or HHSA: Childrens Services can request the forensic evaluation. Pursuant to Penal Code §13823.95, law enforcement will pay for the examination when there is a prosecutable case. Otherwise, the requesting agency shall be responsible for payment.

A forensic evidentiary interview / history gathering is usually conducted before the physical examination, unless the patient presents within 72 hours of a sexual abuse/assault. This process may review all information regarding the necessity to proceed with a medical evaluation, particularly in situations where the need for the exam was initially in question.

It is recognized that after considering all the criteria, there are situations where the investigator may still be unsure of the necessity for an examination. There are a number of medical facilities countywide that provide some or all of these services. For after hours questions, the on-call child abuse physician for Children’s Hospital or Palomar Hospital are available by telephone through the hospital.

An examination of the child for the purpose of preserving evidence should be arranged when one or more of the following conditions are present, or whenever circumstances warrant:

A. *Sexual Abuse*

- Presence of a suspicious genital injury. A suspicious genital injury is one that is unexplained by the history provided, or for which there is no history. A suspicious genital injury may be acute or old.
 - An acute injury is one characterized by recent occurrence (hours to a few days), bleeding or a history of recent bleeding, or pain.

- An old genital injury is seen when an acute injury heals creating distortion of the original anatomy. Many, but not all, acute injuries heal completely, leaving no residual signs. A history of pain or bleeding is more likely to be associated with residual injury, but some children do not report pain or bleeding as a function of denial or dissociation.
- Likelihood of recovering evidence. Trace evidence such as sperm, saliva, blood, debris, lubricant, etc. may be recoverable by a standard forensic examination if the victim is examined as soon as possible within the 72 hours following sexual assault. Time is of the essence. Evidence is rapidly lost or destroyed by washing, bathing, eating, drinking, urinating, changing clothes, or simply the passage of time. This evidence may link the victim to the perpetrator or to the crime scene. Evidence is collected according to the state protocol OCJP 923, 925.
- History of genital-to-genital or anal contact. This kind of contact provides the opportunity for injury to occur.
- Presence of, or suspicion of sexually transmitted disease. While not all sexually transmittable diseases are sexually transmitted, an examination can look for signs of genital injury and, if present, provide support for the abusive nature of the contact.

B. Physical Abuse

- When little or no history is available (infants, toddlers, and/or developmentally disabled), and the injuries are consistent with non-accidental trauma
- When the injury is not consistent with the history.
- When multiple injuries or head trauma are suspected or present.
- When the visible / presenting injury is traumatic enough to require medical care.
- When evaluation by a medical expert is necessary to:
 - document non-accidental trauma (e.g., a suspicious fracture)
 - to confirm long term / chronic abuse or neglect (e.g., Munchausen Syndrome by Proxy or Failure to Thrive).

7. *Forensic Interview Process*

A forensic interview is a component of a follow-up investigation by either law enforcement or HHS: Childrens Services which compliments routine investigative interviews.

7.1 Goals of the Forensic Interview Process

- Provide a safe, supportive environment in which a child can share information regarding what their experience has been.
- In the event that a child discloses that they have been victimized, the goal of the interview is to obtain as much information as possible regarding:
 - The identity of the alleged perpetrator
 - The relationship of the alleged perpetrator to the child
 - Time frames in which the alleged abuse occurred
 - Locations where the alleged abuse occurred
 - Specific details regarding the types of alleged abuse
 - Threats, force or coercion used by the alleged perpetrator
 - Any other alleged perpetrators or victims
 - In intra-familial cases, the extent of knowledge and involvement of others in the home
 - Whether or not other types of abuse are present (e.g., domestic violence, substance abuse)
- Provide videotaped documentation and summary reports to authorized agencies.
- Provide crisis intervention services to family members and child, as well as a mental health assessment for ongoing treatment needs of the child and family.
- Provide community-based referrals to the family at the end of the evaluation process.
- Facilitate the forensic interview process for relevant agencies.

- Reduce the trauma to the child victim by minimizing the number of interviews and interviewers.

7.2 Who Needs Forensic Interviews

Interviews should be available for victims who are suspected of having experienced sexual abuse, physical abuse, severe neglect; or may have witnessed a violent crime.

Interviews should occur when a referral has been assigned for investigation of a criminal complaint by a law enforcement agency. HHSA: Childrens Services should utilize forensic interviews in situations when there is a need for the skills of a forensic interview specialist.

Forensic interviews should occur:

- For children up to age 13.
- Adolescents between the ages of 14 and 17 can be interviewed at the discretion of the requesting agency.
- For both child and adult developmentally disabled victims.
- Where communication barriers including hearing, vision, verbal handicaps or language differences exist.
- When a young child has been witness to a sibling’s abuse.
- When a young child has been witness to a violent crime.

7.3 The Forensic Interview Setting

Forensic interviews should be the responsibility of an agency not directly involved in the investigation, with experience providing the type of specialized evaluation which includes:

- A multi-disciplinary team approach.
- Child oriented interview rooms.
- Evidentiary medical evaluations available.
- Videotaping capability.
- An observation room for parties authorized to view the interview.

7.4 The Forensic Interview Specialist

A forensic interview specialist should:

Licensed	Possess a graduate mental health degree with state licensure in a relevant field of practice.
Not Licensed	If not licensed, the interview specialist should be a registered intern.
Competence	Have competence in the evaluation of children and families where abuse has occurred.
Training	The interviewer should have at least <u>40 hours of didactic training</u> in addition to at least <u>120 hours of experiential training</u> in the interview process.
Ongoing Training	Receive ongoing training in child sexual abuse and physical abuse, child development and interviewing techniques through attendance at continuing professional education conferences as well as provision of agency in-service training and ongoing review of professional literature.
Review Process	Participate in ongoing individual and group clinical supervision, and peer review process.
Info Familiarity	Be familiar with types of information and details relevant to alleged abuse that should be obtained from victims and child witnesses to meet the referring agency’s needs.
Interview Protocols	Be familiar with interview protocol and methods of presenting forensically defensible questions in a non-leading yet developmentally appropriate manner.
Expert Witness	Be willing and capable of testifying as an expert witness.

7.5 History Gathering

The forensic interview specialist will meet with referring agencies to determine:

- when the case was brought to their attention,
- what their contact with the child has been,
- what interventions their agency has provided,
- whether or not there have been prior reports regarding the child, the family, or the alleged perpetrator.

The forensic interview specialist will meet with parents or care providers to:

- obtain information regarding what prompted their concern about the current allegations,
- explore prior history of the child, developmental considerations, and concerning behavioral indicators.

Special attention should be paid to:

- what statements the child has made pertaining to the alleged abuse,
- the context in which the statements were made,
- how the statement was elicited.

7.6 Process of the Forensic Interview

Observation of the interview should be coordinated between authorized investigative agencies. A multi-disciplinary presence helps ensure that relevant information is obtained in one setting, reducing the need for repetitive interviews. The forensic interview process should include:

- Rapport building.
- Brief developmental assessment.
- Assessment of child’s ability to differentiate between truth and lies; real and pretend.
- Information gathering should include:

- Allowance and encouragement of spontaneous disclosures,
- Questions which progress from general to specific,
- Focused questions, *not* leading questions,
- Attempts to ascertain “who, what, when, and where” regarding the abusive situation or crime witnessed,
- Attempts to elicit information regarding alcohol or other drug usage, pornographic involvement, and use of threat or force and domestic violence,
- Allow and support ventilation of feelings.
- Allow closure after gathering history.
- Assessment of need for second forensic interview.
- Assessment of therapeutic needs.

7.7 Documenting the Forensic Interview

After the forensic interview, the interviewer will provide a copy of the videotape and written report to authorized agencies. The written report will include:

- Referring party.
- Relevant history.
- Significant familial data.
- Brief developmental assessment.
- Summary of interview phases.
- Specific information regarding history provided.
- Recommendations for treatment.
- Recommendations for further evaluation.

8. *Medical Intervention*

8.1 Sexual Abuse Medical Examinations

The State of California, through the Office of Criminal Justice Planning (OCJP), has developed a protocol describing in careful detail procedures for conducting medical examinations of sexual assault and child sexual abuse.

8.1.1 Acute Exams - Victim presents within 72 hours of assault

When the victim discloses the assault or abuse within 72 hours of the event, the victim should receive an acute medical forensic examination, with evidence collection, as soon as possible to prevent loss of evidence. It is imperative that the victims not wash, bathe, or change clothes, in order to avoid eliminating evidence. If the victim needs to urinate, it is important to save the urine. If reasonable, eating and drinking should be avoided until after the collection of specimens from the mouth. The components of the examination are:

- Collection and proper bagging of the victim’s clothing.
- Scanning of the body with ultraviolet light looking for bodily fluids.
- Collection of specimens to detect perpetrator body fluids (e.g., semen, saliva).
- Collection of other debris present.
- Collection of reference specimens from the victim (saliva, hair, blood).
- Careful examination of the genital and anal areas, using a colposcope to detect injury.
- Careful examination of the entire body to detect acute injury, as well any other sign of abuse, neglect, or abnormal medical condition.
- Photographic documentation of the injuries (genital, anal, body).

- Testing for sexually transmitted diseases is no longer required by OCJP. It may be done if clinically indicated. Prophylactic antibiotics will be offered to adolescent victims.
- Testing for pregnancy and an offer of postcoital contraceptive medication.
- Proper air-drying of specimens to prevent deterioration.
- Maintenance of chain of evidence.
- Preparation of OCJP Form 923 or 925 as written documentation of the findings of the examination which is given to law enforcement and CPS as appropriate.

8.1.2 Indications for Non-Urgent Medical Evidentiary Examinations

When a victim presents beyond 72 hours of the assault, it is most probable that injuries are healed and there may be trace evidence. One may still find healed hymen tears, STDs, and pregnancy. If a victim presents within two weeks of an assault, injuries may sometimes be seen that have not yet completely healed. In adolescent victims, sperm may sometimes be found up to two weeks in cervical mucus. In order to preserve any residual evidence that may still remain, a medical evidentiary examination should be conducted.

Medical evidentiary examinations for children and adolescents are conducted at appropriate Sexual Assault Response Team (SART) centers throughout San Diego County.

Victims under the age of 18, as well as developmentally delayed who are suspected victims of sexual molest, should receive a forensic medical evidentiary examination at an appropriate medical facility, i.e., Children’s Hospital or Palomar Hospital to preserve residual evidence. This examination should occur when a referral has been assigned for investigation of a criminal complaint by a law enforcement agency or authorized by designated law enforcement personnel. HHSA: Childrens Services should utilize medical evidentiary examinations when there is a need for the

expertise of a SART examiner. The reason for any exceptions to this rule must be articulated and documented.

Guidelines addressing the need for forensic medical evidentiary examinations can be found in Section 6.3 of this Protocol.

Upon admission to Polinsky Children’s Center, children taken into protective custody will receive a thorough physical exam with non-magnified, non-colposcope genital exam. It is unnecessary for law enforcement to duplicate. However, law enforcement should obtain the medical reports from the Polinsky Children’s Center and include them in the investigative reports.

8.2 Physical Abuse

Victims of physical abuse are often very young. Many are infants. Children too young to talk do not describe their abuse. They are usually recognized by the physical results of the abuse. In all cases, physical abuse is defined by the presence of harmful effects of physical injury.

8.2.1 *No Immediate Medical Danger*

When there is no immediate medical danger to the child and the nature of the abuse requires the medical evaluation of physical evidence, the child should be taken to a hospital with the necessary facilities and staff competency to recover and document the evidence, and render an opinion in court. Examples of abuse that will require specialized evaluation include:

- Burns.
- Multiple impressions caused by different instruments.
- Ligature markings.
- Bite marks.

The means to recover evidence will include:

- Photography.
- Video recording.
- Audio recording.

8.2.2 Serious Injuries Requiring Immediate Medical Care

If the seriousness of the injuries necessitate immediate medical care at the closest facility, make arrangements to ensure that evidence is properly recovered and documented by a professional willing to testify in court.

8.2.3 Interviewing Parents and Other Caretakers

When parents and other caretakers are interviewed by the physician or medical representative at the time of the examination, carefully document the questions asked and the responses given. This interview is conducted in order to determine the nature and origin of the injury, for appropriate medical care, and referral to the HHSA: Childrens Services or law enforcement.

8.2.4 Interviewing Physical Abuse Victims

The interview with the injured child should be conducted:

- In a quiet and private place whenever possible.
- Always out of the presence of the caretaker who may be a potential suspect.

Carefully document and make part of the medical record:

- The questions asked.
- The child’s responses and demeanor.

Avoid repetitive interviews with child victims by different health care professionals.

8.2.5 Physical Abuse Medical Evidentiary Examinations

A. Future Legal Proceedings

Medical exams are needed in almost all cases where future legal proceedings are anticipated. The more serious the injury, the more this is true. The medical examination must be performed by a physician or nurse practitioner who is familiar with the medical conditions caused by physical abuse, is willing to provide a statement for evidence, and, if necessary, go to court as a witness.

Physical abuse examinations often require the supplemental use of imaging techniques and laboratory tests depending on the anatomic location and nature of the injury in question.

Some types of injury are highly predictive of future risk, and experienced physicians can provide investigators with useful guidance in making placement decisions.

B. Neglect, Physical and Sexual Abuse

Many young children with clear signs of physical abuse have also been neglected. Some children are both physically and sexually abused at the same or at different times. All children abused in any way are likely to show signs of psychological trauma. A child who presents with indicators of one form of maltreatment should always have at least a limited assessment for other forms of abuse.

C. Child Abuse Cases and Medical Evidentiary Assessments

Many cases of child abuse are handled with voluntary agreements and without litigation, thus they may appear not to require medical assessment. If the injuries require medical care, a medical evidentiary assessment is needed.

Evidentiary medical assessments should be performed in cases in which injuries are minor, because the *may be* part of a picture that implies serious risk for severe abuse.

D. Injuries Requiring Hospitalization

Children with injuries requiring hospitalization receive a medical evidentiary examination if they are hospitalized at one of the facilities offering these services. Children admitted to Children’s Hospital, and their families, receive a thorough assessment by a hospital social worker if inflicted injuries are suspected. Children with very severe or life-threatening injuries are almost always brought to Children’s Hospital as part of the San Diego County Trauma System. These children receive medical evidentiary assessment by physicians from the Center for Child Protection and their families are assessed by hospital social workers.

8.2.6 Steps in Medical Evidentiary Examinations

A medical evidentiary examination for physical abuse should be performed by a qualified health professional as described in the previous section and requires the following steps:

- **A Medical History and Physical Examination** which are as complete as possible. In most cases this should include inspection of the genital and anal areas in good light, since sexual abuse may accompany physical abuse.

- **Appropriate Laboratory Studies Documenting the Medical Conditions** produced by injury and to exclude such medical conditions as bleeding disorders which can sometimes produce signs similar to those of physical abuse. The specific studies needed vary greatly depending on the injuries suspected in a given case, and must be decided by the attending physician and/or child abuse consultant.

- **Imaging Studies** to discover and document injuries which cannot be seen on physical examination. These studies may include:
 - radiographs
 - ultrasound scans
 - computerized tomography scanning
 - nuclear scanning
 - magnetic resonance imaging

The studies needed in any given case are variable and must be determined on a case-by-case basis. X-rays of the entire skeleton, however, are indicated in most children less than two years of age in whom physical abuse is suspected, and in some older children.

- **Photographs** which document visible injuries. Polaroid type photographs should be avoided.
- A **Complete Medical Record** with all findings in it.
- A **Written Interpretation Providing an Opinion** as to whether the injuries are inflicted, and supporting evidence for that opinion.
- **Prompt and Appropriate Communication** with the child's family if they are present at the site of the examination. However, any opinions given to the family regarding the origin of the injury should be coordinated with the investigator from law enforcement or HHSA: Childrens Services.
- A **Review of Medical Records of Prior Care** may play an important role; including the records of pre-hospital care in serious injury cases. Any statements related to the injury made by the child or his or her family should be recorded in writing. This documentation may be invaluable in law enforcement evaluations of the case and in refreshing the examiner's memory for later testimony in court.

8.3 General Neglect

Children believed by the HHSA: Childrens Services workers to be generally neglected without resultant physical or mental harm, should be referred to specific available sources of primary health care. They generally need *not* be referred for evidentiary examination.

8.4 Severe Neglect

This term implies harm or imminent harm and some of these cases require evidentiary medical assessment. One example is suspected non-organic failure to thrive, a condition of infancy where the baby is underweight for age and height. Careful and skilled medical assessment is highly recommended in the diagnosis of severe neglect.

8.5 Medical Neglect

The documentation of harm or imminent harm resulting from a caretaker’s failure to provide necessary and available health care requires medical assessment which may be simple or complex. In some cases, where the advantage to the child of the available medical remedy is fairly small, highly specialized medical opinion may be needed to determine whether or not intervention is appropriate.

9. *Legal Intervention*

9.1 District Attorney

The District Attorney’s primary responsibility is to decide whether to prosecute a criminal case. The decision is made based upon the available evidence of abuse and the competency of the witnesses. The District Attorney’s Office may also become involved in the investigation long before that decision is made, by providing assistance in obtaining either search or arrest warrants.

All felony child abuse cases involving victims currently **under the age of 14 or developmentally disabled** are prosecutable through the District Attorney’s Family Protection Division. **Misdemeanor child abuse** cases occurring outside the City of San Diego are prosecuted by the District Attorney’s Office in the branch offices. Felony abuse cases involving victims presently 14 years old or older generally are referred to the Superior Court Division of the District Attorney’s Office or to the branch offices, while juvenile perpetrator abuse cases are handled by the Juvenile Division. In both felony and misdemeanor cases, the prosecutors must strive to minimize further trauma to the child victim / witness. Specialized training is a key ingredient to that end.

The assigned Deputy District Attorney meets with the child victim / witness and the supporting family. The primary purpose of this meeting is to evaluate the very young child for legal competency and to discuss all aspects of the criminal process. Generally the Deputy District Attorney will have an opportunity before hand to view the videotape from the forensic evidentiary interview, and upon reviewing the video and the facts of the case, the DDA will decide how detailed the interview need to be with the child victim.

Repetitive Interviews with child victims are to be avoided; this requires prosecutors be thoroughly prepared for the interview so the questioning is focused and concise. Before interviewing the child victim:

- Read all available reports of previous interview(s) with the child
- Review the videotaped evidentiary interview of the victim.
- Articulate the reason and purpose for the interview.

Whenever possible, the assigned Deputy District Attorney will arrange with law enforcement to attend the evidentiary interview and meet with the victim when a suspect is in custody.

The Deputy District Attorney’s goal, once the case has been issued, is to inform and protect the victim within the confines of obtaining a criminal conviction. Courtroom tours and the “Kids in Court” program help to answer children’s questions. The assigned Deputy District Attorney maintains contact with the child and the supporting adult throughout the criminal proceeding keeping them aware of the status of the case.

The Deputy District Attorney keeps an open line of communication with other professionals who are interacting with the victim:

- Informing the victim’s Protective Service Worker
- Notifying the other legal representatives of the upcoming court proceedings and when the victim may have to testify
 - Protective Service Worker
 - Deputy County Counsel
 - Deputy Public Defender
 - Child Advocate
 - Law Enforcement

The Deputy District Attorney prepares each child for court in a manner suited to that Deputy District Attorney’s style and the needs of the victim. Preparation clearly encompasses the topics to be discussed in court and some explanation, within the appropriate developmental range of the child, of how lawyers, the judge, and the witness interact. The “Kids in Court” program assists with this preparation. Teenage victims also need an explanation of the court process prior to their testimony.

The Deputy District Attorney is also responsible for explaining the outcome of each proceeding so that the victim, family, and other professionals understand the significance of court rulings and orders.

Effective communication must be sensitive to the needs of the victim and the criminal prosecution goals. It is this constant communication between the Deputy

District Attorney, the victim, and other interested parties that will enable everyone to more easily navigate the maze of criminal proceedings.

9.2 County Counsel

County Counsel represents HHSA: Childrens Services in all dependency matters.

County Counsel first becomes involved when a Protective Service Worker brings a petition they wish to file to County Counsel for legal scrutiny. If County Counsel agrees a legal basis exists for issuance of a petition, the Protective Service Worker issues the petition alleging a child comes within §300 of the Welfare and Institutions Code for reasons of abuse or neglect. County Counsel appears at detention and readiness hearings on filed petitions and provides an attorney to negotiate cases outside of court at any stage of the proceedings. Cases which cannot be resolved by pleas at detention or readiness hearings are tried by County Counsel deputies.

Sensitive and difficult cases may be long lived. After the court takes jurisdiction and makes a child a dependent of the court, the case *must be* reviewed every six months until:

- The court can safely return the child to the parent.
- An alternative permanent placement for the child can be sought.
- No protective issue exists and the case can be terminated.
- The child is eighteen years of age.

County Counsel appears at all regular review hearings and any special hearings and proceedings (e.g., discovery motion or contempt actions) which might arise. The child and the child’s parents have the right to contest any order of the court at any stage of the proceedings, potentially resulting in numerous trials in a single case.

There are cases in which County Counsel must call a child as a witness. County Counsel deputies are trained to prepare a child for testimony and to take a child’s direct examination, while providing the child the maximum protection under the law. Preparation of the child for testimony and the taking of a child’s testimony are conducted in accordance with the agreement between County Counsel, Public Defender child advocates, and the District Attorney.

The goal of the juvenile dependency case is the protection of the child and the reunification of the child with the family when appropriate. The child is the client of HHSA: Childrens Services and the focus of the legal proceedings. All legal efforts of County Counsel in dependency proceedings are directed toward this goal.

9.3 Public Defender

A Deputy Public Defender becomes involved in a dependency case after appointment by the court at the detention hearing. Once appointed, this same attorney represents the child client at all juvenile court proceedings.

The primary function of the child advocacy attorney is to provide the child client with an experienced and developmentally sensitive attorney to advocate on behalf of the child, protect the child’s interest, and actively work toward reunification with the family. If reunification with the parent/guardian is not appropriate, then the focus turns to finding the child an alternative permanent home. Guided by the mandate of Welfare and Institutions Code §317, the Public Defender has set forth the responsibilities of the office as follows:

- Investigate the facts alleged in the dependency petition.
- Investigate and evaluate the child client’s needs and make recommendations to the court regarding placement, treatment, education and other necessary services.
- Participate in the proceedings to the degree necessary to adequately represent the child (i.e., subpoena and examine witnesses, seek appropriate experts).
- Investigate and report to the court any interests of the child beyond the scope of the dependency proceedings. The deputies have an ongoing responsibility to assist their clients and advocate their client’s interests when dealing with other courts (i.e., family, criminal), agencies, and schools.
- Investigate and monitor the provision of services to the child and family after the dispositional phase of the dependency proceedings.

One of the most important duties of the Deputy Public Defender is to protect the child victim witness during testimony in contested juvenile court proceedings. The deputies recognize that child witnesses have special needs in adapting to the adult courtroom environment because of their age and developmental limitations. To

address this concern, the Dependency Section of the Department of Public Defender has entered into an agreement with the Juvenile Dependency Division of the Office of County Counsel on the treatment of child victims and witnesses in juvenile court proceedings. The agreement has become a part of this Protocol and is included in Section 9.5.

9.4 City Attorney, San Diego

The City Attorney prosecutes misdemeanor child abuse cases which occur within the city limits of San Diego. The office has a specialized protocol for all cases involving children. As part of the evaluation process the assigned Deputy City Attorney interviews the child for each child abuse case submitted for prosecution.

The Deputy City Attorney contacts the assigned Protective Service Worker to determine the current status of the case. The outcome of HHSA: Childrens Services and Juvenile Court intervention is often a consideration in deciding whether to file criminal charges at the misdemeanor level.

9.5 Child Advocacy Agreement Between:

District Attorney • San Diego City Attorney • County Counsel

The District Attorney’s Family Protection Division, the City Attorney’s Child Abuse Unit, County Counsel Juvenile Dependency Division, and the Public Defender’s Child Advocacy Division, established the following protocol regarding child victims and witnesses:

Juvenile Dependency Cases

- In juvenile dependency cases where the ***Public Defender represents the child(ren)*** who are the subject of the action, the **Public Defender** will ***take full responsibility*** for any matters relating to the testimony or possible testimony of such children.
- In juvenile dependency cases where children who are the subject of the action are not represented by independent counsel, the **County Counsel** will ***assume full responsibility*** as to any matters relating to the testimony or possible testimony of such children.

Criminal Proceedings

In all criminal proceedings, as well as dependency cases, the following *non-exclusive guidelines* will govern the preparation for and the taking of a child victim’s or witness’ testimony:

- Attorneys will ***limit the number of continuances*** in each case to those that are in the best interest of the child.
- When appropriate in dependency proceedings, attorneys will ***file written motions*** requesting the court permit the child witness to testify in chambers pursuant to Welfare and Institutions Code § 350.
- In advance of the hearing, attorneys will ***arrange a visit to the courthouse for the child***, explaining the differences in physical setting, etc., of dependency court and criminal court. This will let the child witness become familiar with the courthouse, courtroom, judge’s chambers, and court personnel.
- Attorneys will ***schedule the child witness’ testimony*** with sensitivity to the child’s age and routine.
- Attorneys will meet with the potential child witness in advance of the hearing in order to ***establish rapport with the child witness*** through age appropriate play and verbal interaction.
- Attorneys will ***prepare the child for the kind of questions*** he or she will be asked in court by all counsel and the court, and ***will advise the child*** that responses like “*I don’t understand the question,*” and “*I don’t know*” are permissible responses where appropriate.
- If there is a pending criminal prosecution, the child’s attorney must ***explain to the child victim*** the differences between the juvenile and criminal courts and should defer to the Deputy District Attorney or Deputy City Attorney any questions the child victim may have regarding sentencing consequences of his or her testimony for the alleged perpetrator.

- Whenever possible, attorneys will ***rearrange the courtroom and/or chambers*** to make a setting less intimidating for the child witness. This responsibility may include transporting and setting up children’s furniture where the child will testify.
- Attorneys will, as part of the written § 350 motion, or pursuant to Penal Code § 868.5 in criminal proceedings, ***request*** that an available and appropriate support person of the child’s choice be present during testimony.
- Attorneys will ***encourage*** the child to bring a favorite toy or object to hold during testimony.
- Attorneys will ***be sensitive*** to the child’s age and level of cognitive and emotional development in their interaction with the child and will ensure that the interaction of others with the child is appropriate.
- Attorneys will ***control the questioning*** of the child to ensure questions are asked in an age-appropriate manner and without causing undue embarrassment to the child.
- Attorneys will ***request that objections be argued outside*** the hearing or presence of the child, and will ***explain to the child*** that the objections do not mean they have done something wrong.
- Attorneys will ***be sensitive to the need*** for the child witness to take breaks during testimony.
- Specific concerns and fears of the child victim/witness regarding the alleged perpetrator, communicated to the child’s attorney, should immediately be ***shared with the prosecutor*** handling the criminal prosecution of the alleged perpetrator when appropriate. Conversely, the assigned prosecutor should inform the child’s attorney of any “No Contact” orders as they relate to the criminal case.

- To assist the court in complying with Evidence Code § 765, use a child development expert when appropriate, to *advise the court in developing guidelines* for courtroom examination of a child witness when there is a concern about the child’s developmental functioning.

It is the belief of each agency that the application of these guidelines to the child victim witness will help minimize the child’s feelings of anxiety and distress, ensuring accuracy, completeness, and integrity of testimony.

The District Attorney’s Office, City Attorney’s Office, County Counsel, and the Public Defender, are committed to eliminate, as much as possible, the traumatic aspects of the investigative process in cases involving child witnesses.

Accordingly, each agency agrees that a child will not be interviewed by the attorney or the attorney’s investigator regarding the specific details of abuse unless there is an articulated reason to do so.

The protection of the child witness must also extend to the elimination of unnecessary psychological evaluations, assessments, interviews, etc.

It is understood by the District Attorney’s Office, City Attorney’s Office, County Counsel, and the Public Defender Child Advocacy Division, that some of the above guidelines will be appropriately implemented by the child’s participation in the “Kids in Court” program.

10. Judiciary

When they are victims or witnesses, children must often testify in dependency and delinquency Juvenile Courts; in Family Courts because of custody disputes; and in Superior Courts. A single incident may result in separate investigations and often multiple interviews.

If multi-disciplinary teams are established, the child’s interviews should be conducted by one person to reduce the child’s trauma.

A child may have to testify before:

- | | |
|-----------------------|---|
| The Grand Jury | ➤ for indictments |
| Before a Judge | ➤ preliminary hearings
➤ in court trials
➤ in Juvenile Court
➤ in Family Court |
| Before a Jury | ➤ in Superior Court criminal trials |

10.1 Juvenile Dependency Proceedings

An attorney is appointed for the child in juvenile dependency proceedings where:

- the child is the victim of abuse or neglect
- the child may testify against his or her parents

10.1.1 Public Defender Represents Child

In juvenile dependency cases where the Public Defender represents child(ren) who are the subject of the action, the Public Defender, in accord with County Counsel, takes full responsibility for any matter relating to the testimony or possible testimony of such child(ren).

10.1.2 Other Counsel Represents Child

In juvenile dependency cases where children who are the subject of the action are not represented by independent counsel, the **County Counsel** will ***assume full responsibility*** as to any matters relating to the testimony or possible testimony of such children. The representing attorney must ensure the child’s attendance at the Kids in Court program and coordinate the child’s preparation with the County Counsel. If the child is to testify in a criminal court felony matter, the District Attorney must prepare the child.

10.1.3 Judges

Judges before whom a child is to testify should review the child’s preparation at the beginning of the trial and, if necessary, delay the child’s testimony until the child has been properly prepared. Continuances should be limited to those in the best interests of the child.

In all courtrooms, judges are obligated to conduct the proceedings to accommodate and protect the child witness.

In all cases, children must promise, in age appropriate language, to tell the truth. In dependency matters, the child may testify out of the presence of the accused abusers.

In criminal proceedings the child must testify in the presence of the defendants, but may have a support person with them when they testify.

Testimony by closed circuit television is permitted in limited circumstances, but is seldom used.

All questioning must be geared to the developmental level of the child. Leading questions are permitted; simple questions must be posed; vocabulary should be appropriate.

Recesses should be frequent, courtroom seating rearranged, and attorneys required to question the child in a non-threatening manner. A judge should

introduce him or herself, and let the child know he or she may ask for water, breaks, etc.

A volunteer advocate may be appointed to a child in the juvenile dependency system, from groups such as Voices for Children, or a Special Advocate from the Center for Child Protection, Children’s Hospital, for those cases out of the purview of Voices for Children, to be a friend and companion during the time the child is in the system. These volunteers are specially trained to see that the child is not lost or forgotten. The judge should acknowledge these volunteers and consider their input.

10.2 Family Court Proceedings

Children become involved in Family Court proceedings when their parents cannot agree on custody and visitation. The child may be interviewed by conciliation court counselors and may have to testify. Abuse allegations, both sexual and physical, may arise, necessitating an evaluation by HHSA: Childrens Services for possible Juvenile Court intervention.

11. Therapeutic Interventions

11.1 Goals and Roles of the Therapist

A therapist may become involved with a child victim or witness prior to, during, or after legal procedures have taken place. In some cases, it may be the therapist who hears the initial disclosure and makes the child abuse report. In other cases, the therapist is brought into the picture following the disclosure.

The therapist’s primary goal is to facilitate healing in the child who has been victimized; and may include working with family members to negotiate changes in the child’s environment (including family relationships). Secondly, the therapist may act as a conduit to assist in minimizing re-traumatization and maximizing effectiveness of the child as a witness during the legal process. In this role specifically, the therapist should:

- ***Work Closely with Other Professionals*** involved in the legal and protective system, and allied professionals, using a team approach as much as possible.
- ***Maintain Adequate Barriers*** in their work with the child and family members to avoid potential contamination of evidence. This includes such things as *not* initiating discussion of factual information with family members who have *not* independently disclosed such information; as well as monitoring family discussions of factual information for the same purpose.
- ***Provide Support to the Child Victim Through the Legal Process***, as appropriate. Such means of support may include encouraging the victim to discuss fears regarding the court process itself, and the potential outcome; visiting a courtroom with the victim; using play to enact potential interview/court scenes; providing support during interviews, depositions, and/or court sessions; explaining the process and impact on the victim to the victim’s significant others (i.e., natural family, foster family).

- ***Provide Consultation to Professionals*** in the legal and protective system regarding developmental issues, and those specific to their particular victim or case.

11.2 The Therapist as a Witness

The therapist should be prepared to testify as a witness, although this will not always be necessary. This testimony may be given by deposition and/or in court appearances. In either event, therapists may be asked about all sessions during which they have treated the specific victim, not just those in which disclosures have been made. If called upon to do so, therapists should be prepared to discuss their methods of documentation which may include written narrative, audiotape, and /or videotape. The method of documentation should be consistently applied. Be prepared to explain reasons for deviation from the standard method of documentation. The therapist should always be prepared for his or her written records to be subpoenaed. Written records should be concise, clear, and factual.

12. Communications

12.1 Multidisciplinary Communication

Communication between disciplines working on a specific case involving a child victim/witness is essential. The lack of such communication leaves individual professionals with a one-dimensional view of the case, individual and/or family. Information necessary for the investigation, intervention, prosecution, and treatment may exist with only one member of the response team and must be shared. State law allows for the sharing of information among members of the multi-disciplinary teams in child abuse cases.

Sharing of significant information allows for:

- ***Ensuring safety***, when professionals are aware of high-risk individuals and/or behaviors.
- ***Minimizing re-traumatization*** by reduction of “triggering” statements and activities by the various professionals.
- ***More appropriate response*** to the child by professionals due to increased understanding of the individual child.
- ***More effective long term planning***, including planning for potential family reunification, based on an expanded database.

12.2 Guidelines for Disclosures to Non-Investigative Professionals

Often children and adolescents disclose abuse to professionals other than those who normally investigate these actions, such as:

- School personnel
- Therapists
- Recreation staff
- Day care operators

- Clergy
- Healthcare personnel

When such a disclosure takes place, the following guidelines should be followed:

- These individuals should **make their mandated child abuse report** based upon the initial statement or their suspicions.
- Non-investigative professionals should **never attempt to do their own investigation**.
- Any questions asked should be **open-ended** (i.e., “Tell me what you mean?”)
- The child should **not be given promises** that cannot be guaranteed (i.e., “If you tell, you won’t need to testify in court.”).

12.3 Confidentiality Considerations

Many of the documents and proceedings relating to children are confidential by statute, case law, and/or court order. The laws are ambiguous and confusing regarding how much access to these documents and proceedings is permitted.

Professionals are encouraged to share information under the appropriate protective court orders and within the restrictions and guidelines of their professions.

Exercise Caution at all times to protect the best interests of the child. The courts are charged with the responsibility of taking an active role in preventing and punishing breaches of confidentiality by attorneys and parties to the proceedings.

— APPENDICES —

Appendix 1: Signature Pages

Appendix 2: Definitions

Appendix 3: Applicable Laws

- Criminal Statutes
- Dependency Statutes
- Evidence Statutes
- Procedure and Protection

Appendix 1: Signature Pages (Original signatures on file at Center for Child Protection)

“Our attached signatures signify our commitment to the goals of the Child Victim-Witness Protocol.”

Appendix 2: Definitions

Abuse	as defined in Penal Code §11165 et. seq.
Child	a minor under the age of 18
Expert	a person who, by education, training, or experience, has special knowledge and skills so as to assist those who need it
Victim	a person who is the subject of abuse
Witness	a person who has knowledge of the abuse of another

Appendix 3: Applicable Laws

Appendix 3.1 Criminal Statutes

Annoy / Molest a Child	Penal Code §647.6
Assault with Intent to Commit	Penal Code §220
Child Abuse / Neglect	Penal Code §273
Child Exploitation	Penal Code §311
Continuous Sexual Abuse	Penal Code §288.5
Corporal Punishment	Penal Code §273d
Incest	Penal Code §285
Lewd Acts with a Child	Penal Code §288
Murder	Penal Code §187
Oral Copulation	Penal Code §288a
Penetration by Foreign Object	Penal Code §289
Rape	Penal Code §261
Reporting Law	Penal Code §11165 et. seq.
Sodomy	Penal Code §286

Appendix 3.2 Dependency Statutes

Confidential Records; Disclosure	Welfare & Institutions Code § 830
Counsel for Parent, Counsel for Minor	Welfare & Institutions Code § 317
County Counsel or District Attorney	Welfare & Institutions Code § 318.5
Custody by Law Enforcement	Welfare & Institutions Code § 305
Custody by Social Services Worker	Welfare & Institutions Code § 306
Dependency Status	Welfare & Institutions Code § 300
Duty of Social Worker	Welfare & Institutions Code § 328
Inspection of Petitions and Reports	Welfare & Institutions Code § 827
Petition, Notice	Welfare & Institutions Code § 311
Pre-Petition Custody	Welfare & Institutions Code § 313

Appendix 3.3 Evidence Statutes

Exception, Def’s Admission	Evidence Code § 1228
Hearsay, Definition	Evidence Code § 1200
Leading Question & Child Witness	Evidence Code § 767
Leading Question, Definition	Evidence Code § 764
Witness Disqualification	Evidence Code § 701
Witness Presumed Competent	Evidence Code § 700
Hearsay Preliminary Hearings	California Constitution, Art. I, § 30(a)

Appendix 3.4 Procedure & Protection

Closed Circuit 2-Way TV	Penal Code § 1347
Confidential Communications Between a Patient and Psychotherapist	Evidence Code § 1012
Court Control Juvenile Court Proceedings; Testify in Chambers	Welfare & Institutions Code § 350
Court Control Mode of Questions	Evidence Code § 765
DA & Court shall Act to Prevent Psychological Harm to Child	Penal Code § 288(d)
Exclusion of Public	Penal Code § 868.7
No Psychological Exam to Determine Credibility	Penal Code § 1112
Postpone Preliminary Exam, Child<10	Penal Code § 861.5
Presence of Support Persons	Penal Code § 868.5
Protect Minor Witnesses from intimidation, recesses, remove robes, restructure courtroom, limit testimony to school hours	Penal Code § 868.8
Rape Shield Law	Evidence Code § 782
Special Room for Minors	Penal Code § 868.6
Videotaping of Preliminary Exam	Penal Code § 1346

