

## **CHILD DEATH AND POTENTIALLY FATAL CHILD ABUSE INVESTIGATIONS**

Cases involving potentially fatal or fatal child abuse are handled in the same manner as nonfatal instances of abuse. Frequently these cases are identified by medical personnel. Special consideration should be given to support services for surviving siblings.

### **Considerations When There Are Surviving Siblings**

Professionals should ensure that surviving siblings were not victimized. In addition, surviving siblings benefit from referrals for grief and mourning counseling. Finally, surviving siblings should be allowed to attend the funeral of the deceased child, as appropriate.

### **Medical Personnel**

In cases of a fatal or potentially life-threatening injury, where child abuse or neglect is known or suspected, paramedics or other medical professionals should

- immediately contact law enforcement and the Child Protection Hotline
- take note of the child's demeanor and emotional state [if applicable], physical appearance, and clothing
- document all medical intervention given the child by including a full description of all visible injuries, any complaints of pain, all examinations conducted and the location of the examination [i.e., Emergency Department (ED) or crime scene], photographs, charts, test results, and diagnosis or prognosis
- document all statements made by parents, caretakers, or relatives regarding the child's medical history and any explanation for the child's condition including who was responsible for watching the child at the time of the injury, anyone present at the time the injury occurred, and the demeanor of the person making the statement
- document any objects or clothing removed from the child or the immediate area of the scene that may be related to the child's condition or injuries
- document the identity, condition, and current location of any siblings if known
- document the name, identification number of law enforcement and DCFS contact person in addition to recording the SCAR referral number provided by the Child Protection Hotline [CHP]
- obtain the legible copy of the Emergency Medical Technician [EMT]

form and record the RA# in the hospital records

If the initial exam is done at a potential crime scene, care should be exercised to document

- the position of the child upon first observation
- any immediately visible injuries
- the condition of the child's clothing
- the immediate surroundings [including any objects or unusual smells, sounds, sights] presence of drug paraphernalia, signs of alcohol use
- the behavior of the child
- any physical contact initiated by the examiner for treatment purposes
- any relevant measurements [water or air temperature, distance, heights, ventilation system, presence of space heater]
- condition of the sleep surface in cases involving co-sleeping or overlay as contributing causes to the death or injury
- the reasons for immediate transportation of the child by paramedics or EMTs from the potential crime scene and immediate notification to law enforcement personnel of the need to dispatch a unit to maintain the integrity of the potential crime scene for evidence collection purposes

## **Coroner**

A directive issued by the Department of the Coroner regarding the processing of cases in which there is a reasonable suspicion of child abuse and neglect has been in effect since 1999. Investigation of a child abuse case takes priority over the investigation of any other homicide. In order to ensure that a comprehensive investigation is completed, a coroner's pediatric investigator with special training in child abuse and neglect cases is assigned for any case in which the decedent is under the age of fourteen. The assigned investigator is responsible for

- initiating a Child Death Report to DCFS
- locating birth and medical records if immediately available and forwarding them to the Deputy Medical Examiner [DME]
- providing follow-up information to families in deferred cases
- providing follow-up investigation for the DME

It is preferable that before the autopsy be conducted a complete set of photographs and full-body x-rays are taken. The x-rays are referred to the radiologist for an evaluation. If possible, the autopsy should not be conducted

until the evaluation by the radiologist is completed in case additional x-rays are necessary.

The autopsy should be done immediately upon the completion of the investigation. The DME is directed to photograph and document the location, size and color of all injuries. Microscopic sections of injuries and all organs are taken for dating of injuries and for abnormal pathologic findings. The eyes must be submitted to ophthalmologic pathology for evaluation. The brain is submitted in each case to neuropathology for analysis. The DME must request paramedic and complete hospital records, any hospital photographs, the results of any sexual assault tests taken at the treating hospital and copies of all hospital x-rays. When indicated, a sexual assault kit will be collected from the child by the DME prior to washing or photographing the body.

The DME should consult with the investigating law enforcement agency. If the law enforcement agency has not made the required report to DCFS, the DME is directed to do so by immediately calling the Child Protection Hotline.

In instances where the cause of death has been finalized, case files are public records. A hold can be placed upon records

- in deferred cases
- in cases where the law enforcement agency requests a security hold
- in cases where the request is for a child abuse report, medical records or police reports
- in cases where the death occurred in foster care

See Index of Appendices for directive for the Department of the Coroner.

## **Law Enforcement**

Responding officers are responsible for investigating and securing all possible crime scenes for subsequent forensic examination [photographs, collection of biological samples, or fingerprints]. The location of the child upon first observation may not be the location of the abuse. Initial identifying information interviews with parents, caretakers, relatives, or siblings at the scene, and emergency treatment personnel should be conducted expeditiously. Secure and recover any objects, clothing, furniture, weapons, or other instrumentality potentially related to the crime. When siblings are present, notify the Child Protection Hotline [CPH] for investigation of possible risk to the siblings.

Ideally, the investigating officer will be experienced in both child abuse and

homicide investigations. If not, it is recommended that the law enforcement agency employ a collaborative approach between trained investigators in both disciplines within the agency to ensure that the following elements are covered during the investigation

- determine whether prior contacts concerning the child exist involving current or prior abuse of the child or any siblings
- determine whether there are any prior contacts alleging domestic violence in the home, other crimes of violence, weapons offenses, drug offenses, or dependency intervention
- follow-up interviews with medical personnel including EMTs, paramedics, nurses, physicians, hospital social worker, and coroner
- interview the parent(s), caretakers, siblings, other relatives, neighbors, school officials, the family physician, and any mandated reporter regarding the child's history as well as the causes of the child's current injuries
- thoroughly examine all potential crime scenes to ensure proper documentation through forensic crime scene collection including photographs, collection of samples for scientific analysis, and retrieval of all instrumentalities related to the child's current injuries
- obtain current medical records documenting treatment for the presenting injuries, a complete medical history of the child, a recent photo of the child prior to the current injury, DCFS records, dependency court records, and medical records on any siblings who have also suffered prior abuse
- consult forensic pediatric experts regarding allegations of accidental injury, shaken baby syndrome, sudden infant death, birth defects, severe neglect, starvation, failure to thrive, or any special needs of the child [developmental disabilities, visual impairment, hearing deficiency, motor impairment] and obtain opinions from them in writing
- consider using polygraph examinations as an investigative tool to eliminate suspects and elicit additional evidence because any statements made during the course of the exam may be admissible in court
- video tape the suspect's reenactment of the events and/or the scene utilizing the statements given by the suspect
- create a battered-child timeline to reflect when, where, and how previous injuries occurred; the suspect's statements as to how the injuries occurred; who had control of the child and when each person had control; and the medical evidence as to the injuries
- consider whether to request a skeletal trauma series of an injured child for the purpose of revealing old fractures
- locate all previous medical records documenting the child's medical history and the location of treatment

## **District Attorney**

The prosecutor assigned a child fatality case should have received special training and should be assigned to prosecute the case at the filing stage. Every effort should be made to ensure that the same prosecutor handles the case from the filing through sentencing, a process called vertical prosecution. During the prosecution of the case, it is imperative to consult with other legal professionals including county counsel and the attorney for any surviving siblings. If the surviving siblings are anticipated to be called as witnesses, the prosecutor should use the services offered by the advocates of the Victim-Witness Assistance Program who provide counseling referrals, financial assistance, Kid's Court, and court accompaniment. The prosecutor should determine whether a Court-Appointed Special Advocate/guardian ad litem [CASA/GAL] has been appointed in dependency court. [CASAs are discussed in the Victim Services section of this document.]

According to WIC §326.5, the Judicial Council shall adopt a rule of court to comply with the federal Child Abuse Prevention and Treatment Act for the appointment of a guardian ad litem, who may be an attorney or CASA. This should be done in cases in which a petition is filed or prosecution is initiated based upon neglect or abuse of the child. As of April, 2004, no rule has been promulgated.

A multi-disciplinary effort is the preferred method when preparing for the prosecution of these cases. It is fairly common for the investigating officer and the assigned prosecutor to work closely with one another before filing the case to address many of the issues documented above under the Law Enforcement section including contacting experts, preparing a battered-child timeline, and obtaining medical histories. Prosecutors also participate in case presentation before the ICAN Child Death Review Team and assist in the evaluation of child fatality cases.

## **County Counsel**

The Children's Services Division within the Office of County Counsel has an internal child death review team which was created to offer assistance and guidance to an attorney assigned to a child death case. A child death protocol has been established to provide attorneys with office-approved guidelines and procedures. Attorneys handling cases involving a child fatality are expected to be familiar with and follow this protocol. Neither failure to file criminal charges nor dismissal or acquittal on such charges precludes the county counsel from adjudicating the case in dependency court. Vertical prosecution is an important element of the protocol which includes the following tasks

- complete a child death report upon receiving the case; forward a copy to the internal child death review committee
- review the file reports to determine the identity, status, and whereabouts of surviving siblings; seek appropriate court orders or modification of existing orders
- ascertain whether the manner or mode of death is accidental; if investigation is warranted, obtain complete medical statements and expert opinions
- determine whether criminal charges are pending for the purpose of sharing copies of all reports, photographs, caretaker statements, physical evidence findings, polygraph statements, tapes, expert opinions, and lab results with law enforcement and deputy district attorneys
- if criminal charges have been resolved, obtain certified copies of minute orders, dockets, and abstracts of judgment to determine the results of the trial and sentencing
- contact the coroner to obtain a copy of the autopsy report and a death certificate
- consult with the attorney representing any child victim or witness regarding the advisability of an interview and evaluation to determine if the child should testify in chambers, attend the funeral of the deceased child, or attend grief therapy or other available counseling
- if the deceased child was a dependent of the court, the attorney should request an order terminating jurisdiction over that child

## **Protective Orders**

It may be necessary for the court to rule on appropriate contact/no contact orders consistent with maintaining the safety, protection, and well-being of any surviving siblings or any other children living in the home.

If a criminal protective order is issued in the criminal court pursuant to PC §136.2, it has precedence in enforcement over any civil court order against the defendant if the crime charged involves domestic violence as defined in PC §13700. {PC §136.2(h)(2)} [See Index of Appendices for a Summary of Restraining and Protective Orders.]

## **DCFS**

The first priority is the protection and safety of surviving siblings and other children living in the home or in the placement of the deceased child. DCFS will respond to the discovery of a child's death as follows

- **Child Death While Under the Supervision of DCFS**

When a CSW, Supervising CSW, or Duty Supervising CSW becomes aware that a child under the supervision of DCFS has died, the employee shall immediately notify the Child Protection Hotline. If abuse or neglect is suspected, the law enforcement agency in the jurisdiction where the child died shall be notified. {PC §§11164 et seq.}

DCFS shall conduct an investigation into the child's death, assess the safety of any surviving minor siblings or unrelated children residing in the deceased child's home, and coordinate its investigation with law enforcement. All internal follow-up procedures mandated by DCFS policy shall be followed, including reporting the death to the Board of Supervisors, the Children's Services Inspector General, the Chief Administrative Officer, the Presiding Judge of the Juvenile Court, the Commission for Children and Families, County Counsel, and ICAN.

- **Death of a Child Not Under Supervision of DCFS**

When DCFS learns of the death of a child which may possibly be related to abuse or neglect, a referral shall be made to the Child Protection Hotline, and an entry of the death shall be entered in the Child Welfare Services/Case Management System [CWS/CMS], whether the deceased child has any surviving minor siblings or not. DCFS shall immediately cross report the referral to law enforcement and shall conduct an immediate response investigation into the child's death. The first priority of the DCFS investigation should be the assessment of risk to any surviving minor siblings or children residing in the home of the deceased child. All internal follow-up procedures mandated by DCFS policy shall be followed, including a report of the child's death to the Board of Supervisors, the Children's Services Inspector General, the Chief Administrative Officer, the Presiding Judge of the Juvenile Court, the Commission for Children and Families, County Counsel, and ICAN.