

# ***ENHANCING OMBUDSMAN'S RESPONSIBILITIES WITHIN CHILD WELFARE SERVICES***

## ***SUMMARY***

In response to citizen complaints investigated by prior San Diego County Grand Juries and complaints received by the 2008/2009 San Diego County Grand Jury (Grand Jury) relative to the San Diego County Child Welfare Services (CWS), a division of the Health and Human Services Agency, an analysis covering complaints during the period from 1988/2008 was conducted. During the investigation the Grand Jury discovered that no mechanism exists for the reopening of initial investigations in which complaints have been made regarding factual errors or abuse of process. Review of Grand Jury reports and interviews with parents reveal a perception by some that factual determinations made by CWS workers initiating Court proceedings for child dependency are flawed and not reasonably subject to challenge by the parents. The Office of the CWS Ombudsman is presently not authorized to reinvestigate an initial CWS determination in a child dependency case. The Grand Jury recommends enhancing the responsibilities of the Ombudsman to include investigating allegations of abuse of process and factual errors and to forward findings to the Deputy Director of CWS.

## ***PURPOSE AND BACKGROUND***

In response to concerns regarding CWS processes in the removal of children that developed while reviewing previous Grand Jury investigations, the 2008/2009 Grand Jury undertook a study of the history of Grand Jury investigations as they related to CWS for the past 20 years. It has been noted that Grand Jury reports during this period discussed similar complaints and made recommendations to CWS about its initial contacts with families. Parents complain that these meetings are fraught with difficulties. They think that initial reports are not always accurate. To many parents, both the initial determination and the process leading to it are a source of confusion and misunderstanding. The initial determination is important because it serves as the foundation for Court proceedings, including placement of the child. In general, parents are not aware of any means to challenge the initial determination until a Court hearing.

## ***PROCEDURES***

Prior Grand Jury reports and CWS responses to the recommendations made in those reports were the object of extensive review by the Grand Jury. Additionally, a number of CWS employees were interviewed: initial case workers, administrators, and an Ombudsman.

## ***DISCUSSION***

The Grand Jury undertook this investigation after Jurors noted that CWS is the current recipient of complaints of a similar nature to those covered in previous Grand Jury reports. The current Grand Jury investigation indicates that decisions made by CWS personnel are not subjected to significant oversight although they are subject to limited internal review of the case file. Additionally, employees of CWS testified that they "have

the ability to consciously manipulate the Risk Assessment tool<sup>1</sup> for the purpose of supporting any decision [they] .... make.”

When errors are made in CWS operations they are often highly visible and can have a devastating impact on the children and families involved. In addition, they have a negative impact on the overall credibility of the department. Where independent review exists it gives people confidence that no cover-ups are occurring. When there is no investigation, objectivity can be called into question. Objective investigations give the public confidence no cover-up exists.

Based on recent newspaper articles and citizen complaints, there is a public perception that CWS’s internal investigations are biased in favor of the agency. Interviews with CWS managers revealed that internal investigations are limited to a review of the case file and no additional field investigation occurs. When specifically asked if they sought out the truth, managers indicated that once a child was no longer in the home, active investigation of the initial circumstances of a case ceases.

CWS has an Ombudsman’s Office. According to the Office of the Ombudsman pamphlet: *A Guide To Understanding the Complaint Process in Children’s Services* printed by the County of San Diego in 2002, the Office of the Ombudsman does *not* have the authority to:

- Ensure that recommendations resulting from an Ombudsman investigation will be implemented;
- Make recommendations to the court, or overturn court orders;
- Investigate cases in which appeals or lawsuits are pending;
- Change or make exceptions to state or federal laws and regulations;
- Investigate or make recommendations in personnel or disciplinary matters; or
- Give legal advice.

The word “*Ombudsman is a Swedish term meaning one who investigates complaints and protects citizen’s rights.*”<sup>2</sup> The Office of the Ombudsman investigates complaints related to CWS policy, procedures and social work practice. If a complaint is made regarding errors in facts as they are recorded in a CWS file, or complaints alleging an abuse of process, the Office of the Ombudsman has no power to investigate.

The Grand Jury heard testimony that when a complaint is received by the Ombudsman, there is no factual investigation of the original complaint or communication with the parties that were originally interviewed. Simple reviews of written files appear to the Grand Jury to be insufficient to address complaints by parents or other custodial parties regarding factual inconsistencies. Reviews of past Grand Jury reports indicate that there are no case-specific reviews when disputes arise between the agency and affected families.

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<sup>1</sup> Risk Assessment is a form that is used by CWS workers to assess the level of risk and may support the removal of the child.

<sup>2</sup> County of San Diego Health and Human Services Agency Office of the Ombudsman Pamphlet: *A Guide To Understanding the Complaint Process in Children’s Services.*

The Grand Jury is recommending that the Office of the Ombudsman have its powers enhanced so that it will be better equipped to fulfill its mandate and serve the public good. The Grand Jury's view of the Ombudsman is that it should be utilized by the Deputy Director as a tool for resolving complaints regarding facts in question. The Grand Jury wishes to make it clear that it is not advocating a radical change in operations of CWS. Nor are we asking that the Ombudsman be empowered to act outside the existing power structure. The Jury is simply recommending that the Ombudsman have the ability to check the facts of cases in which complaints are received. This recommendation stems from interviews conducted by the Grand Jury in which employees of CWS indicated that the Ombudsman only checks paperwork and does not re-check facts or allegations of abuse of process.

### ***FACTS AND FINDINGS***

***Fact:*** CWS has a peer and multi-disciplinary review system in place for cases involving removal and placement of children.

***Fact:*** It is a function of CWS to remove children from their homes in cases of suspected abuse or neglect.

***Fact:*** Many parents feel they have no meaningful ability to challenge factual determinations once they are made by CWS and accepted by the court.

***Fact:*** There is an Ombudsman's Office within the CWS.

***Fact:*** The powers, duties and limitations of the Ombudsman's Office are described in a pamphlet published by the CWS and available to families.

***Fact:*** Peer and multi-disciplinary reviews do not consist of reinvestigating the facts of the original case.

***Finding #01:*** CWS removal and placement recommendations are based on the original caseworker's initial investigation only.

***Finding #02:*** The Ombudsman's Office is limited by CWS in its ability to do a full and complete re-investigation of the facts underlying a case in which a complaint has been registered.

### ***RECOMMENDATIONS***

**The 2008/2009 San Diego County Grand Jury recommends that the San Diego County Child Welfare Services:**

**09-27: Empower the CWS Office of the Ombudsman to reopen and reinvestigate original case findings when complaints are made alleging factual errors or abuse of process and to forward its findings to the Deputy Director of CWS.**

## ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<b><u>Responding Agency</u></b>	<b><u>Recommendations</u></b>	<b><u>Date</u></b>
<b>San Diego County Child Welfare Services</b>	<b>09-27</b>	<b>8/18/09</b>