

RESOLUTION 03-02-2016 (As Amended)

DIGEST

Family Law: Mandatory Reporting of Sexual Abuse After Judicial Finding.
Amends Family Code section 3027 to mandate sexual abuse reporting.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 3027 and Penal Code section 11169 as follows:

§3027

1 (a) If allegations of child abuse, including child sexual abuse, are made during a child
2 custody proceeding and the court has concerns regarding the child's safety, the court may take
3 any reasonable, temporary steps as the court, in its discretion, deems appropriate under the
4 circumstances to protect the child's safety until an investigation can be completed. Nothing in
5 this section shall affect the applicability of Section 16504 or 16506 of the Welfare and
6 Institutions Code.

7 (b) If allegations of child abuse, including child sexual abuse, are made during a child
8 custody proceeding, the court may request that the local child welfare services agency conduct
9 an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions Code.
10 Upon completion of the investigation, the agency shall report its findings to the court.

11 (c) Family court judicial officers who make a finding by a preponderance of evidence of
12 sexual abuse as defined within Section 11165.1 of the Penal Code following an evidentiary
13 hearing, where all parties were present and were represented by counsel, shall refer that case to
14 the local child welfare agency for investigation.
15

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: DOJ maintains CACI to help track persons who have had findings of child abuse and/or neglect made against them. More specifically, this includes substantiated allegations of sexual abuse based upon a preponderance of evidence standard, as determined by a social worker and not a court of law. Basically, persons every day are entered into the CACI system regardless of whether there has ever been an adjudication. When CPS has either not stepped in or failed to substantiate an allegation, however, it is later substantiated by the same standard after an evidentiary hearing, where both parties are present and represented by counsel, this is not being reported to the DOJ. This is counter to the policy to protect children and it is counter to the spirit and intent of Penal Code section 11169.

When both persons have been present for an evidentiary hearing and represented by counsel, should the family court find by a preponderance of evidence sexual abuse as defined in Penal Code section 11165.1, it should also be reported. Without this, each and every one of us could have a child attending school with a teacher whom has a civil conviction for sexual abuse.

The Solution: This proposal would (1) amend Family Code section 3027 to require family courts to notify their local child welfare agency when the court has made a finding by a preponderance of evidence of sexual abuse as defined in Penal Code section 11165.1, only after an evidentiary hearing where both parties were present and were represented by counsel, and (2) require the child welfare agency to refer the case to the DOJ for entry into CACI. Persons no longer with civil convictions would be overlooked in background checks.

This proposal does not place any burden on child welfare services *other than filling out a one page form*, i.e. form BCIA 8583. It is imperative that the individuals reviewing this legislation realize that there would be no further need for an investigation of the sexual abuse allegation, as by the time the local child welfare agency receives this referral from the family court judicial officer the findings have already been substantiated under a greater scrutiny in family law courts and with both parties present having a full opportunity to be noticed and heard while represented by counsel. The same is true with respect to the perpetrator no longer requiring a grievance hearing to challenge his/her name's entry into CACI, as they already had their day in court to challenge this and were given full due process.

This proposal does not interfere with superiority of jurisdiction since by the time a family law court substantiates a finding of sexual abuse as defined in Penal Code section 11165.1, child welfare services has either opted to not file a dependency petition and/or has determined said allegations to be inconclusive and/or unfounded.

Last year's resolution 09-08-2015 was withdrawn at the Conference to work on some of the concerns and requested amendments.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION:

Not known.

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RESPONSIBLE FLOOR DELEGATE: Tiffany L. Andrews, CWLS, CFLS

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RESOLUTIONS COMMITTEE RECOMMENDATION

The CCBA's Resolutions Committee recommended Disapproval of this resolution. The reasons for the recommendation were addressed by amendments taken on the Conference Floor, and the resolution was approved handily by the full Conference.

COUNTERARGUMENTS

FLEXCOM

Approve in Principle

Rationale:

This Resolution proposes to amend Family Code Section 3027 and Penal Code Section 11169 regarding sexual abuse reporting. The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) supports the rationale and goal of the proponent as a positive step towards ensuring that such offenders are added to the Child Abuse Central Index.

Disclaimer:

This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.