

**ASSEMBLY BILL**

**No. 921**

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**Introduced by Assembly Member Jones-Sawyer**

February 22, 2013

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An act to amend Sections 8547.1, 8547.2, and 8547.8 of the Government Code, to amend Sections 241, 241.4, and 243 of the Penal Code, and to amend Sections 10601.2 and 10850.4 of the Welfare and Institutions Code, relating to child welfare services.

LEGISLATIVE COUNSEL'S DIGEST

AB 921, as introduced, Jones-Sawyer. Child welfare services.

The California Whistleblower Protection Act prohibits an employee, as defined to include specified employees in the executive and judicial branches of state government, from using his or her official authority or influence for the purpose of intimidating, threatening, coercing, or commanding any person for the purpose of interfering with his or her right to make a protected disclosure of improper governmental activity. The act requires the State Auditor to investigate and report on improper governmental activities, as specified. The act authorizes an employee or applicant for employment who files a written complaint alleging reprisal, retaliation, or similar prohibited acts to also file a copy of the written complaint with the State Personnel Board. The act provides that any person who intentionally engages in acts of reprisal, retaliation, or similar prohibited acts against a state employee or applicant for state employment for having made a protected disclosure, is subject to punishment for a misdemeanor and liable in an action for civil damages brought by the injured party.

This bill, in addition, would provide that the act applies to an employee of a county child welfare agency.

By expanding the scope of crime under the act, this bill would impose a state-mandated local program.

Existing law establishes the crime of assault against specified public safety officers, such as peace officers, firefighters, and emergency medical technicians, among others, while engaged in the performance of their duties, as specified. The offense is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

This bill would expand the scope of the offense to include social workers employed by a county in child welfare, as defined, while engaged in the performance of their duties, as specified.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law establishes the crime of assault against a peace officer engaged in the performance of his or her duties as a member of a police department of a school district and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties. The offense is punishable by imprisonment in the county jail not exceeding one year or by imprisonment pursuant to specified existing law.

This bill would expand the scope of the offense to include social workers employed by a county in child welfare, as specified.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program

Existing law establishes the crime of battery against specified public safety officers, such as peace officers, firefighters, and emergency medical technicians, among others, while engaged in the performance of their duties, as specified. The offense is punishable, except when the victim sustains an injury, by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

This bill would expand the scope of the battery offense described above to include a social worker employed by a county in child welfare, as defined, while engaged in the performance of his or her duty, as specified.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Under existing law, the State Department of Social Services oversees the administration of county public social services, including child welfare services. Existing law requires the department to establish the

California Child and Family Service Review System, in order to review all county child welfare systems.

This bill would, in relation to these reviews, require each county to consult with specified stakeholders in developing the county self-assessments and county improvement plans, or any subsequent county self-assessments, as specified. This bill would also require the county improvement plans to include a separately titled provision that lists and provides the rationale for proposed operational improvements that may be implemented at a cost savings to the county or within existing resources. By increasing duties of county officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) This act shall be known as the Child Welfare
- 2 Social Worker Empowerment and Foster Child Protection Act.
- 3 (b) The Legislature finds and declares that, while California
- 4 foster children are in foster care, they are uniquely dependent upon
- 5 the lawful, efficient, and competent delivery of state and local
- 6 government services and implementation of state and federal law.
- 7 (c) The Legislature further finds and declares that the special
- 8 and uniquely vulnerable status of foster children warrants extending
- 9 whistleblower protections for state employees to county child
- 10 welfare social workers to ensure that each worker, without fear of
- 11 retaliation, can advocate for policies that benefit every child and
- 12 publicly participate in discussions about each child's wellbeing.
- 13 (d) The Legislature further finds and declares that county child
- 14 welfare social workers who implement state and federal policy
- 15 related to the delivery of services and implementation of programs

1 benefitting foster children should have an avenue to suggest  
2 cost-saving efficiencies in the delivery of services to foster  
3 children, in a fashion that is transparent and accountable to the  
4 public.

5 SEC. 2. Section 8547.1 of the Government Code is amended  
6 to read:

7 8547.1. The Legislature finds and declares that state *employees*,  
8 *and county child welfare* employees should be free to report waste,  
9 fraud, abuse of authority, violation of law, or threat to public health  
10 without fear of retribution. The Legislature further finds and  
11 declares that public servants best serve the citizenry when they  
12 can be candid and honest without reservation in conducting the  
13 people's business.

14 SEC. 3. Section 8547.2 of the Government Code is amended  
15 to read:

16 8547.2. For the purposes of this article, the following terms  
17 have the following meanings:

18 (a) "*County child welfare agency*" means a county welfare  
19 department or child welfare department or any other county agency  
20 that employs social workers and is responsible for the placement  
21 and supervision of children and youth in foster care.

22 ~~(a)~~

23 (b) "Employee" means an individual appointed by the Governor,  
24 or employed or holding office in a state agency as defined by  
25 Section 11000, including, for purposes of Sections 8547.3 to  
26 8547.7, inclusive, an employee of the California State University,  
27 or an individual appointed by the Legislature to a state board or  
28 commission and who is not a Member or employee of the  
29 Legislature. In addition, "employee" means a person employed by  
30 the Supreme Court, a court of appeal, a superior court, or the  
31 Administrative Office of the Courts for the purposes of Sections  
32 8547.3 to 8547.7, inclusive, and Section 8547.13, except for those  
33 provisions of Section 8547.4 concerning notice of adverse action  
34 and the State Personnel Board. "*Employee*" also means a person  
35 employed as a social worker by a county child welfare agency.  
36 "Employee" includes a former employee who met the criteria of  
37 this subdivision during his or her employment.

38 ~~(b)~~

39 (c) "Illegal order" means a directive to violate or assist in  
40 violating a federal, state, or local law, rule, or regulation, or an

1 order to work or cause others to work in conditions outside of their  
2 line of duty that would unreasonably threaten the health or safety  
3 of employees or the public.

4 (e)

5 (d) “Improper governmental activity” means an activity by a  
6 state agency *or county child welfare agency* or by an employee  
7 that is undertaken in the performance of the employee’s duties,  
8 undertaken inside a state office *or county child welfare agency*  
9 *office*, or, if undertaken outside a state office *or county child*  
10 *welfare agency office* by the employee, directly relates to state  
11 government *or a county child welfare agency*, whether or not that  
12 activity is within the scope of his or her employment, and that (1)  
13 is in violation of any state or federal law or regulation, including,  
14 but not limited to, corruption, malfeasance, bribery, theft of  
15 government property, fraudulent claims, fraud, coercion,  
16 conversion, malicious prosecution, misuse of government property,  
17 or willful omission to perform duty, (2) is in violation of an  
18 Executive order of the Governor, a California Rule of Court, or  
19 any policy or procedure mandated by the State Administrative  
20 Manual or State Contracting Manual, or (3) is economically  
21 wasteful, involves gross misconduct, incompetency, or inefficiency,  
22 *or, in the case of social workers employed by a county child welfare*  
23 *agency, endangers the health or well-being of children*. For  
24 purposes of Sections 8547.4, 8547.5, 8547.7, 8547.10, and 8547.11,  
25 “improper governmental activity” includes any activity by the  
26 University of California or by an employee, including an officer  
27 or faculty member, who otherwise meets the criteria of this  
28 subdivision. For purposes of Sections 8547.4, 8547.5, and 8547.13,  
29 “improper governmental activity” includes any activity by the  
30 Supreme Court, a court of appeal, a superior court, or the  
31 Administrative Office of the Courts, or by an employee thereof,  
32 who otherwise meets the criteria of this subdivision.

33 (d)

34 (e) “Person” means an individual, corporation, trust, association,  
35 a state or local government, or an agency or instrumentality of any  
36 of the foregoing.

37 (e)

38 (f) “Protected disclosure” means a good faith communication,  
39 including a communication based on, or when carrying out, job  
40 duties, that discloses or demonstrates an intention to disclose

1 information that may evidence (1) an improper governmental  
2 activity, or (2) a condition that may significantly threaten the health  
3 or safety of employees or the public if the disclosure or intention  
4 to disclose was made for the purpose of remedying that condition.  
5 Protected disclosure specifically includes a good faith  
6 communication to the California State Auditor’s Office alleging  
7 an improper governmental activity and any evidence delivered to  
8 the California State Auditor’s Office in support of the allegation.  
9 “Protected disclosure” also includes, but is not limited to, a  
10 complaint made to the Commission on Judicial Performance.

11 (f)

12 (g) “State agency” is defined by Section 11000. “State agency”  
13 includes the University of California for purposes of Sections  
14 8547.5 to 8547.7, inclusive, and the California State University  
15 for purposes of Sections 8547.3 to 8547.7, inclusive. Sections  
16 8547.3 to 8547.7, inclusive, shall apply to the Supreme Court, the  
17 courts of appeal, the superior courts, and the Administrative Office  
18 of the Courts in the same manner as they apply to a state agency.

19 SEC. 4. Section 8547.8 of the Government Code is amended  
20 to read:

21 8547.8. (a) A state employee or applicant for state employment  
22 who files a written complaint with his or her supervisor, manager,  
23 or the appointing power alleging actual or attempted acts of  
24 reprisal, retaliation, threats, coercion, or similar improper acts  
25 prohibited by Section 8547.3, may also file a copy of the written  
26 complaint with the State Personnel Board, together with a sworn  
27 statement that the contents of the written complaint are true, or are  
28 believed by the affiant to be true, under penalty of perjury. The  
29 complaint filed with the board, shall be filed within 12 months of  
30 the most recent act of reprisal complained about.

31 (b) Any person who intentionally engages in acts of reprisal,  
32 retaliation, threats, coercion, or similar acts against a state  
33 employee or applicant for state employment *or employee of a*  
34 *county child welfare agency* for having made a protected disclosure,  
35 is subject to a fine not to exceed ten thousand dollars (\$10,000)  
36 and imprisonment in the county jail for a period not to exceed one  
37 year. Pursuant to Section 19683, any state civil service employee  
38 who intentionally engages in that conduct shall be disciplined by  
39 adverse action as provided by Section 19572.

1 (c) In addition to all other penalties provided by law, any person  
2 who intentionally engages in acts of reprisal, retaliation, threats,  
3 coercion, or similar acts against a state employee or applicant for  
4 state employment *or employee of a county child welfare agency*  
5 for having made a protected disclosure shall be liable in an action  
6 for damages brought against him or her by the injured party.  
7 Punitive damages may be awarded by the court where the acts of  
8 the offending party are proven to be malicious. Where liability has  
9 been established, the injured party shall also be entitled to  
10 reasonable attorney's fees as provided by law. However, *except*  
11 *for county child welfare agency employees*, any action for damages  
12 shall not be available to the injured party unless the injured party  
13 has first filed a complaint with the State Personnel Board pursuant  
14 to subdivision (a), and the board has issued, or failed to issue,  
15 findings pursuant to Section 19683.

16 (d) This section is not intended to prevent an appointing power,  
17 manager, or supervisor from taking, directing others to take,  
18 recommending, or approving any personnel action or from taking  
19 or failing to take a personnel action with respect to any state  
20 employee or applicant for state employment *or any employee of*  
21 *a county child welfare agency* if the appointing power, manager,  
22 or supervisor reasonably believes any action or inaction is justified  
23 on the basis of evidence separate and apart from the fact that the  
24 person has made a protected disclosure as defined in subdivision  
25 ~~(b)~~ (f) of Section 8547.2.

26 (e) In any civil action or administrative proceeding, once it has  
27 been demonstrated by a preponderance of evidence that an activity  
28 protected by this article was a contributing factor in the alleged  
29 retaliation against a former, current, or prospective employee, the  
30 burden of proof shall be on the supervisor, manager, or appointing  
31 power to demonstrate by clear and convincing evidence that the  
32 alleged action would have occurred for legitimate, independent  
33 reasons even if the employee had not engaged in protected  
34 disclosures or refused an illegal order. If the supervisor, manager,  
35 or appointing power fails to meet this burden of proof in an adverse  
36 action against the employee in any administrative review,  
37 challenge, or adjudication in which retaliation has been  
38 demonstrated to be a contributing factor, the employee shall have  
39 a complete affirmative defense in the adverse action.

1 (f) Nothing in this article shall be deemed to diminish the rights,  
2 privileges, or remedies of any employee under any other federal  
3 or state law or under any employment contract or collective  
4 bargaining agreement.

5 SEC. 5. Section 241 of the Penal Code is amended to read:

6 241. (a) An assault is punishable by a fine not exceeding one  
7 thousand dollars (\$1,000), or by imprisonment in the county jail  
8 not exceeding six months, or by both the fine and imprisonment.

9 (b) When an assault is committed against the person of a parking  
10 control officer engaged in the performance of his or her duties,  
11 and the person committing the offense knows or reasonably should  
12 know that the victim is a parking control officer, the assault is  
13 punishable by a fine not exceeding two thousand dollars (\$2,000),  
14 or by imprisonment in the county jail not exceeding six months,  
15 or by both the fine and imprisonment.

16 (c) When an assault is committed against the person of a peace  
17 officer, firefighter, emergency medical technician, mobile intensive  
18 care paramedic, lifeguard, process server, traffic officer, code  
19 enforcement officer, animal control officer, *social worker employed*  
20 *by a county in child welfare*, or search and rescue member engaged  
21 in the performance of his or her duties, or a physician or nurse  
22 engaged in rendering emergency medical care outside a hospital,  
23 clinic, or other health care facility, and the person committing the  
24 offense knows or reasonably should know that the victim is a peace  
25 officer, firefighter, emergency medical technician, mobile intensive  
26 care paramedic, lifeguard, process server, traffic officer, code  
27 enforcement officer, animal control officer, *social worker employed*  
28 *by a county in child welfare*, or search and rescue member engaged  
29 in the performance of his or her duties, or a physician or nurse  
30 engaged in rendering emergency medical care, the assault is  
31 punishable by a fine not exceeding two thousand dollars (\$2,000),  
32 or by imprisonment in a county jail not exceeding one year, or by  
33 both the fine and imprisonment.

34 (d) As used in this section, the following definitions apply:

35 (1) Peace officer means any person defined in Chapter 4.5  
36 (commencing with Section 830) of Title 3 of Part 2.

37 (2) "Emergency medical technician" means a person possessing  
38 a valid course completion certificate from a program approved by  
39 the State Department of Health Care Services for the medical  
40 training and education of ambulance personnel, and who meets

1 the standards of Division 2.5 (commencing with Section 1797) of  
2 the Health and Safety Code.

3 (3) “Mobile intensive care paramedic” refers to those persons  
4 who meet the standards set forth in Division 2.5 (commencing  
5 with Section 1797) of the Health and Safety Code.

6 (4) “Nurse” means a person who meets the standards of Division  
7 2.5 (commencing with Section 1797) of the Health and Safety  
8 Code.

9 (5) “Lifeguard” means a person who is:

10 (A) Employed as a lifeguard by the state, a county, or a city,  
11 and is designated by local ordinance as a public officer who has a  
12 duty and responsibility to enforce local ordinances and  
13 misdemeanors through the issuance of citations.

14 (B) Wearing distinctive clothing which includes written  
15 identification of the person’s status as a lifeguard and which clearly  
16 identifies the employing organization.

17 (6) “Process server” means any person who meets the standards  
18 or is expressly exempt from the standards set forth in Section 22350  
19 of the Business and Professions Code.

20 (7) “Traffic officer” means any person employed by a county  
21 or city to monitor and enforce state laws and local ordinances  
22 relating to parking and the operation of vehicles.

23 (8) “Animal control officer” means any person employed by a  
24 county or city for purposes of enforcing animal control laws or  
25 regulations.

26 (9) (A) “Code enforcement officer” means any person who is  
27 not described in Chapter 4.5 (commencing with Section 830) of  
28 Title 3 of Part 2 and who is employed by any governmental  
29 subdivision, public or quasi-public corporation, public agency,  
30 public service corporation, any town, city, county, or municipal  
31 corporation, whether incorporated or chartered, that has  
32 enforcement authority for health, safety, and welfare requirements,  
33 and whose duties include enforcement of any statute, rules,  
34 regulations, or standards, and who is authorized to issue citations,  
35 or file formal complaints.

36 (B) “Code enforcement officer” also includes any person who  
37 is employed by the Department of Housing and Community  
38 Development who has enforcement authority for health, safety,  
39 and welfare requirements pursuant to the Employee Housing Act  
40 (Part 1 (commencing with Section 17000) of Division 13 of the

1 Health and Safety Code); the State Housing Law (Part 1.5  
 2 (commencing with Section 17910) of Division 13 of the Health  
 3 and Safety Code); the Manufactured Housing Act of 1980 (Part 2  
 4 (commencing with Section 18000) of Division 13 of the Health  
 5 and Safety Code); the Mobilehome Parks Act (Part 2.1  
 6 (commencing with Section 18200) of Division 13 of the Health  
 7 and Safety Code); and the Special Occupancy Parks Act (Part 2.3  
 8 (commencing with Section 18860) of Division 13 of the Health  
 9 and Safety Code).

10 (10) “Parking control officer” means any person employed by  
 11 a city, county, or city and county, to monitor and enforce state  
 12 laws and local ordinances relating to parking.

13 (11) “Search and rescue member” means any person who is part  
 14 of an organized search and rescue team managed by a governmental  
 15 agency.

16 (12) “*Social worker employed by a county in child welfare*”  
 17 means a social worker employed by a county welfare department  
 18 or child welfare department or any other county agency that  
 19 employs social workers and is responsible for the placement and  
 20 supervision of children and youth in foster care.

21 SEC. 6. Section 241.4 of the Penal Code is amended to read:  
 22 241.4. An assault is punishable by fine not exceeding one  
 23 thousand dollars (\$1,000), or by imprisonment in the county jail  
 24 not exceeding six months, or by both. When the assault is  
 25 committed against the person of a peace officer engaged in the  
 26 performance of his or her duties as a member of a police  
 27 department of a school district pursuant to Section 38000 of the  
 28 Education Code, *or a social worker employed by a county in child*  
 29 *welfare as defined in paragraph (12) of subdivision (d) of Section*  
 30 *241*, and the person committing the offense knows or reasonably  
 31 should know that the victim is a peace officer engaged in the  
 32 performance of his or her duties *or a social worker employed by*  
 33 *a county in child welfare*, the offense shall be punished by  
 34 imprisonment in the county jail not exceeding one year or by  
 35 imprisonment pursuant to subdivision (h) of Section 1170.

36 SEC. 7. Section 243 of the Penal Code is amended to read:  
 37 243. (a) A battery is punishable by a fine not exceeding two  
 38 thousand dollars (\$2,000), or by imprisonment in a county jail not  
 39 exceeding six months, or by both that fine and imprisonment.

1 (b) When a battery is committed against the person of a peace  
2 officer, custodial officer, firefighter, emergency medical technician,  
3 lifeguard, security officer, custody assistant, process server, traffic  
4 officer, code enforcement officer, animal control officer, *social*  
5 *worker employed by a county in child welfare*, or search and rescue  
6 member engaged in the performance of his or her duties, whether  
7 on or off duty, including when the peace officer is in a police  
8 uniform and is concurrently performing the duties required of him  
9 or her as a peace officer while also employed in a private capacity  
10 as a part-time or casual private security guard or patrolman, or a  
11 nonsworn employee of a probation department engaged in the  
12 performance of his or her duties, whether on or off duty, or a  
13 physician or nurse engaged in rendering emergency medical care  
14 outside a hospital, clinic, or other health care facility, and the  
15 person committing the offense knows or reasonably should know  
16 that the victim is a peace officer, custodial officer, firefighter,  
17 emergency medical technician, lifeguard, security officer, custody  
18 assistant, process server, traffic officer, code enforcement officer,  
19 animal control officer, *social worker employed by a county in child*  
20 *welfare*, or search and rescue member engaged in the performance  
21 of his or her duties, nonsworn employee of a probation department,  
22 or a physician or nurse engaged in rendering emergency medical  
23 care, the battery is punishable by a fine not exceeding two thousand  
24 dollars (\$2,000), or by imprisonment in a county jail not exceeding  
25 one year, or by both that fine and imprisonment.

26 (c) (1) When a battery is committed against a custodial officer,  
27 firefighter, emergency medical technician, lifeguard, process server,  
28 traffic officer, ~~or~~ animal control officer, *or social worker employed*  
29 *by a county in child welfare*, engaged in the performance of his or  
30 her duties, whether on or off duty, or a nonsworn employee of a  
31 probation department engaged in the performance of his or her  
32 duties, whether on or off duty, or a physician or nurse engaged in  
33 rendering emergency medical care outside a hospital, clinic, or  
34 other health care facility, and the person committing the offense  
35 knows or reasonably should know that the victim is a nonsworn  
36 employee of a probation department, custodial officer, firefighter,  
37 emergency medical technician, lifeguard, process server, traffic  
38 officer, ~~or~~ animal control officer, *or social worker employed by a*  
39 *county in child welfare*, engaged in the performance of his or her  
40 duties, or a physician or nurse engaged in rendering emergency

1 medical care, and an injury is inflicted on that victim, the battery  
2 is punishable by a fine of not more than two thousand dollars  
3 (\$2,000), by imprisonment in a county jail not exceeding one year,  
4 or by both that fine and imprisonment, or by imprisonment pursuant  
5 to subdivision (h) of Section 1170 for 16 months, or two or three  
6 years.

7 (2) When the battery specified in paragraph (1) is committed  
8 against a peace officer engaged in the performance of his or her  
9 duties, whether on or off duty, including when the peace officer  
10 is in a police uniform and is concurrently performing the duties  
11 required of him or her as a peace officer while also employed in  
12 a private capacity as a part-time or casual private security guard  
13 or patrolman and the person committing the offense knows or  
14 reasonably should know that the victim is a peace officer engaged  
15 in the performance of his or her duties, the battery is punishable  
16 by a fine of not more than ten thousand dollars (\$10,000), or by  
17 imprisonment in a county jail not exceeding one year or pursuant  
18 to subdivision (h) of Section 1170 for 16 months, or two or three  
19 years, or by both that fine and imprisonment.

20 (d) When a battery is committed against any person and serious  
21 bodily injury is inflicted on the person, the battery is punishable  
22 by imprisonment in a county jail not exceeding one year or  
23 imprisonment pursuant to subdivision (h) of Section 1170 for two,  
24 three, or four years.

25 (e) (1) When a battery is committed against a spouse, a person  
26 with whom the defendant is cohabiting, a person who is the parent  
27 of the defendant's child, former spouse, fiancé, or fiancée, or a  
28 person with whom the defendant currently has, or has previously  
29 had, a dating or engagement relationship, the battery is punishable  
30 by a fine not exceeding two thousand dollars (\$2,000), or by  
31 imprisonment in a county jail for a period of not more than one  
32 year, or by both that fine and imprisonment. If probation is granted,  
33 or the execution or imposition of the sentence is suspended, it shall  
34 be a condition thereof that the defendant participate in, for no less  
35 than one year, and successfully complete, a batterer's treatment  
36 program, as described in Section 1203.097, or if none is available,  
37 another appropriate counseling program designated by the court.  
38 However, this provision shall not be construed as requiring a city,  
39 a county, or a city and county to provide a new program or higher

1 level of service as contemplated by Section 6 of Article XIII B of  
2 the California Constitution.

3 (2) Upon conviction of a violation of this subdivision, if  
4 probation is granted, the conditions of probation may include, in  
5 lieu of a fine, one or both of the following requirements:

6 (A) That the defendant make payments to a battered women's  
7 shelter, up to a maximum of five thousand dollars (\$5,000).

8 (B) That the defendant reimburse the victim for reasonable costs  
9 of counseling and other reasonable expenses that the court finds  
10 are the direct result of the defendant's offense.

11 For any order to pay a fine, make payments to a battered  
12 women's shelter, or pay restitution as a condition of probation  
13 under this subdivision, the court shall make a determination of the  
14 defendant's ability to pay. In no event shall any order to make  
15 payments to a battered women's shelter be made if it would impair  
16 the ability of the defendant to pay direct restitution to the victim  
17 or court-ordered child support. If the injury to a married person is  
18 caused in whole or in part by the criminal acts of his or her spouse  
19 in violation of this section, the community property shall not be  
20 used to discharge the liability of the offending spouse for restitution  
21 to the injured spouse, required by Section 1203.04, as operative  
22 on or before August 2, 1995, or Section 1202.4, or to a shelter for  
23 costs with regard to the injured spouse and dependents, required  
24 by this section, until all separate property of the offending spouse  
25 is exhausted.

26 (3) Upon conviction of a violation of this subdivision, if  
27 probation is granted or the execution or imposition of the sentence  
28 is suspended and the person has been previously convicted of a  
29 violation of this subdivision and sentenced under paragraph (1),  
30 the person shall be imprisoned for not less than 48 hours in addition  
31 to the conditions in paragraph (1). However, the court, upon a  
32 showing of good cause, may elect not to impose the mandatory  
33 minimum imprisonment as required by this subdivision and may,  
34 under these circumstances, grant probation or order the suspension  
35 of the execution or imposition of the sentence.

36 (4) The Legislature finds and declares that these specified crimes  
37 merit special consideration when imposing a sentence so as to  
38 display society's condemnation for these crimes of violence upon  
39 victims with whom a close relationship has been formed.

1 (5) If a peace officer makes an arrest for a violation of paragraph  
2 (1) of subdivision (e) of this section, the peace officer is not  
3 required to inform the victim of his or her right to make a citizen's  
4 arrest pursuant to subdivision (b) of Section 836.

5 (f) As used in this section:

6 (1) "Peace officer" means any person defined in Chapter 4.5  
7 (commencing with Section 830) of Title 3 of Part 2.

8 (2) "Emergency medical technician" means a person who is  
9 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses  
10 a valid certificate or license in accordance with the standards of  
11 Division 2.5 (commencing with Section 1797) of the Health and  
12 Safety Code.

13 (3) "Nurse" means a person who meets the standards of Division  
14 2.5 (commencing with Section 1797) of the Health and Safety  
15 Code.

16 (4) "Serious bodily injury" means a serious impairment of  
17 physical condition, including, but not limited to, the following:  
18 loss of consciousness; concussion; bone fracture; protracted loss  
19 or impairment of function of any bodily member or organ; a wound  
20 requiring extensive suturing; and serious disfigurement.

21 (5) "Injury" means any physical injury which requires  
22 professional medical treatment.

23 (6) "Custodial officer" means any person who has the  
24 responsibilities and duties described in Section 831 and who is  
25 employed by a law enforcement agency of any city or county or  
26 who performs those duties as a volunteer.

27 (7) "Lifeguard" means a person defined in paragraph (5) of  
28 subdivision (d) of Section 241.

29 (8) "Traffic officer" means any person employed by a city,  
30 county, or city and county to monitor and enforce state laws and  
31 local ordinances relating to parking and the operation of vehicles.

32 (9) "Animal control officer" means any person employed by a  
33 city, county, or city and county for purposes of enforcing animal  
34 control laws or regulations.

35 (10) "Dating relationship" means frequent, intimate associations  
36 primarily characterized by the expectation of affectional or sexual  
37 involvement independent of financial considerations.

38 (11) (A) "Code enforcement officer" means any person who  
39 is not described in Chapter 4.5 (commencing with Section 830) of  
40 Title 3 of Part 2 and who is employed by any governmental

1 subdivision, public or quasi-public corporation, public agency,  
2 public service corporation, any town, city, county, or municipal  
3 corporation, whether incorporated or chartered, who has  
4 enforcement authority for health, safety, and welfare requirements,  
5 and whose duties include enforcement of any statute, rules,  
6 regulations, or standards, and who is authorized to issue citations,  
7 or file formal complaints.

8 (B) “Code enforcement officer” also includes any person who  
9 is employed by the Department of Housing and Community  
10 Development who has enforcement authority for health, safety,  
11 and welfare requirements pursuant to the Employee Housing Act  
12 (Part 1 (commencing with Section 17000) of Division 13 of the  
13 Health and Safety Code); the State Housing Law (Part 1.5  
14 (commencing with Section 17910) of Division 13 of the Health  
15 and Safety Code); the Manufactured Housing Act of 1980 (Part 2  
16 (commencing with Section 18000) of Division 13 of the Health  
17 and Safety Code); the Mobilehome Parks Act (Part 2.1  
18 (commencing with Section 18200) of Division 13 of the Health  
19 and Safety Code); and the Special Occupancy Parks Act (Part 2.3  
20 (commencing with Section 18860) of Division 13 of the Health  
21 and Safety Code).

22 (12) “Custody assistant” means any person who has the  
23 responsibilities and duties described in Section 831.7 and who is  
24 employed by a law enforcement agency of any city, county, or city  
25 and county.

26 (13) “Search and rescue member” means any person who is part  
27 of an organized search and rescue team managed by a government  
28 agency.

29 (14) “Security officer” means any person who has the  
30 responsibilities and duties described in Section 831.4 and who is  
31 employed by a law enforcement agency of any city, county, or city  
32 and county.

33 (15) *“Social worker employed by a county in child welfare”*  
34 *means a social worker employed by a county welfare department*  
35 *or child welfare department or any other county agency that*  
36 *employs social workers and is responsible for the placement and*  
37 *supervision of children and youth in foster care.*

38 (g) It is the intent of the Legislature by amendments to this  
39 section at the 1981–82 and 1983–84 Regular Sessions to abrogate  
40 the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and

1 Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior  
2 judicial interpretations of this section as they relate to criminal  
3 sanctions for battery on peace officers who are employed, on a  
4 part-time or casual basis, while wearing a police uniform as private  
5 security guards or patrolmen and to allow the exercise of peace  
6 officer powers concurrently with that employment.

7 SEC. 8. Section 10601.2 of the Welfare and Institutions Code  
8 is amended to read:

9 10601.2. (a) The State Department of Social Services shall  
10 establish, by April 1, 2003, the California Child and Family Service  
11 Review System, in order to review all county child welfare systems.  
12 These reviews shall cover child protective services, foster care,  
13 adoption, family preservation, family support, and independent  
14 living.

15 (b) Child and family service reviews shall maximize compliance  
16 with the federal regulations for the receipt of money from Subtitle  
17 E (commencing with Section 470) of Title IV of the federal Social  
18 Security Act (42 U.S.C. Sec. 670 and following) and ensure  
19 compliance with state plan requirements set forth in Subtitle B  
20 (commencing with Section 421) of Title IV of the federal Social  
21 Security Act (42 U.S.C. Sec. 621 and following).

22 (c) (1) (A) The California Health and Human Services Agency  
23 shall convene a workgroup comprised of representatives of the  
24 Judicial Council, the State Department of Social Services, the State  
25 Department of Health Care Services, the State Department of  
26 Education, the State Department of Justice, any other state  
27 departments or agencies the California Health and Human Services  
28 Agency deems necessary, the County Welfare Directors  
29 Association, the California State Association of Counties, the Chief  
30 Probation Officers of California, the California Youth Connection,  
31 and representatives of California tribes, interested child advocacy  
32 organizations, researchers, and foster parent organizations. The  
33 workgroup shall establish a workplan by which child and family  
34 service reviews shall be conducted pursuant to this section,  
35 including a process for qualitative peer reviews of case information.

36 ~~(2)~~

37 (B) At a minimum, in establishing the workplan, the workgroup  
38 shall consider any existing federal program improvement plans  
39 entered into by the state pursuant to federal regulations, the  
40 outcome indicators to be measured, compliance thresholds for each

1 indicator, timelines for implementation, county review cycles,  
2 uniform processes, procedures and review instruments to be used,  
3 a corrective action process, and any funding or staffing increases  
4 needed to implement the requirements of this section. The agency  
5 shall broadly consider collaboration with all entities to allow the  
6 adequate exchange of information and coordination of efforts to  
7 improve outcomes for foster youth and families.

8 *(2) In developing county self-assessments and county*  
9 *improvement plans pursuant to this section, or any subsequent*  
10 *county self-assessments pursuant to this section, each county shall*  
11 *consult with stakeholders, including, but not limited to, county*  
12 *child welfare agencies and probation agency staff at all levels,*  
13 *current and former foster children, children’s attorneys, and foster*  
14 *care providers. The county shall consult with at least one county*  
15 *child welfare worker named by the bargaining unit representing*  
16 *children’s social workers.*

17 (d) (1) The California Child and Family Service Review System  
18 outcome indicators shall be consistent with the federal child and  
19 family service review measures and standards for child and family  
20 outcomes and system factors authorized by Subtitle B (commencing  
21 with Section 421) and Subtitle E (commencing with Section 470)  
22 of Title IV of the federal Social Security Act and the regulations  
23 adopted pursuant to those provisions (Parts 1355 to 1357, inclusive,  
24 of Title 45 of the Code of Federal Regulations).

25 (2) During the first review cycle pursuant to this section, each  
26 county shall be reviewed according to the outcome indicators  
27 established for the California Child and Family Service Review  
28 System.

29 (3) For subsequent reviews, the workgroup shall consider  
30 whether to establish additional outcome indicators that support the  
31 federal outcomes and any program improvement plan, and promote  
32 good health, mental health, behavioral, educational, and other  
33 relevant outcomes for children and families in California’s child  
34 welfare services system.

35 (4) The workgroup shall convene as necessary to update the  
36 outcome indicators described in paragraph (1).

37 (5) *The county improvement plans developed pursuant to this*  
38 *section that are approved by the county board of supervisors shall*  
39 *include a separately titled provision that lists and provides the*  
40 *rationale for proposed operational improvements identified during*

1 *the stakeholder process described in paragraph (2) of subdivision*  
2 *(c) that may be implemented at a cost savings to the county or*  
3 *within existing county resources.*

4 (e) The State Department of Social Services shall identify and  
5 promote the replication of best practices in child welfare service  
6 delivery to achieve the measurable outcomes established pursuant  
7 to subdivision (d).

8 ~~The Notwithstanding Section 10231.5 of the Government~~  
9 ~~Code, the State Department of Social Services shall provide~~  
10 ~~information to the Assembly and Senate Budget Committees~~  
11 ~~Committee on Budget and the Senate Committee on Budget and~~  
12 ~~Fiscal Review and appropriate legislative policy committees~~  
13 ~~annually, beginning with the 2002–03 fiscal year, on all of the~~  
14 ~~following:~~

15 (1) The department's progress in planning for the federal child  
16 and family service review to be conducted by the United States  
17 Department of Health and Human Services and, upon completion  
18 of the federal review, the findings of that review, the state's  
19 response to the findings, and the details of any program  
20 improvement plan entered into by the state.

21 (2) The department's progress in implementing the California  
22 child and family service reviews, including, but not limited to, the  
23 timelines for implementation, the process to be used, and any  
24 funding or staffing increases needed at the state or local level to  
25 implement the requirements of this section.

26 (3) The findings and recommendations for child welfare system  
27 improvements identified in county self-assessments and county  
28 system improvement plans, including information on common  
29 statutory, regulatory, or fiscal barriers identified as inhibiting  
30 system improvements, any recommendations to overcome those  
31 barriers, and, as applicable, information regarding the allocation  
32 and use of the moneys provided to counties pursuant to subdivision  
33 (i).

34 (g) Effective April 1, 2003, the existing county compliance  
35 review system shall be suspended to provide to the State  
36 Department of Social Services sufficient lead time to provide  
37 training and technical assistance to counties for the preparation  
38 necessary to transition to the new child and family service review  
39 system.

1 (h) Beginning January 1, 2004, the department shall commence  
2 individual child and family service reviews of California counties.  
3 County child welfare systems that do not meet the established  
4 compliance thresholds for the outcome measures that are reviewed  
5 shall receive technical assistance from teams made up of state and  
6 peer-county administrators to assist with implementing best  
7 practices to improve their performance and make progress toward  
8 meeting established levels of compliance.

9 (i) (1) To the extent that funds are appropriated in the annual  
10 Budget Act to enable counties to implement approaches to  
11 improving their performance on the outcome indicators under this  
12 section, the department, in consultation with counties, shall  
13 establish a process for allocating the funds to counties.

14 (2) The allocation process shall take into account, at a minimum,  
15 the extent to which the proposed funding would be used for  
16 activities that are reasonably expected to help the county make  
17 progress toward the outcome indicators established pursuant to  
18 this section, and the extent to which county funding for the Child  
19 Abuse, Prevention and Treatment program is aligned with the  
20 outcome indicators.

21 (3) To the extent possible, a county shall use funds in a manner  
22 that enables the county to access additional federal, state, and local  
23 funds from other available sources. However, a county's ability  
24 to receive additional matching funds from these sources shall not  
25 be a determining factor in the allocation process established  
26 pursuant to this subdivision.

27 (4) The department shall provide information to the appropriate  
28 committees of the Legislature on the process established pursuant  
29 to this subdivision for allocating funds to counties.

30 (j) (1) Counties shall continue to be responsible for and  
31 accountable to the department for child welfare program  
32 performance measures, including all of the following:

33 (A) The outcome and systemic factor measures contained in the  
34 federal Department of Health and Human Services Child and  
35 Family Services Review Procedures Manual, Appendix B, Index  
36 of Outcomes and Systemic Factors, and Associated Items and Data  
37 Indicators, issued pursuant to Sections 1355.34(b) and 1355.34(c)  
38 of Title 45 of the Code of Federal Regulations.

1 (B) Information and other requirements necessary for the  
2 California Child and Family Service Review System, as required  
3 pursuant to this section.

4 (C) Monthly caseworker visits with a child in care.

5 (D) Timeliness to begin an investigation of allegations of child  
6 abuse or neglect.

7 (E) Notwithstanding the rulemaking provisions of the  
8 Administrative Procedure Act (Chapter 3.5 (commencing with  
9 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
10 Code), other performance measures resulting from new federal  
11 mandates or court decrees as specified in an all-county letter issued  
12 by the department.

13 (2) The department shall monitor, on an ongoing basis, county  
14 performance on the measures specified in paragraph (1).

15 (3) At least once every five years, the department shall conduct  
16 a comprehensive review of county performance on the measures  
17 specified in paragraph (1).

18 (4) (A) The department shall periodically update the process  
19 guides utilized by counties to prepare the self assessments and  
20 system improvement plans to promote implementation and  
21 evaluation of promising practices and use of data.

22 (B) The process guides also shall include, but not be limited to,  
23 both of the following:

24 (i) County evaluation of demographics for the children and  
25 families served and effectiveness of the system improvement  
26 activities for these populations.

27 (ii) A description of the process by which the department and  
28 counties shall develop mutually agreed upon performance targets  
29 for improvement.

30 (5) The department, in consultation with counties, shall develop  
31 a process for resolving any disputes regarding the establishment  
32 of appropriate targets pursuant to the process provided in paragraph  
33 (4).

34 (6) A county shall submit an update to the department, no less  
35 than annually, on its progress in achieving improvements from the  
36 county's baseline for the applicable measure. The department may  
37 require a county that has not met its performance targets to submit  
38 and implement a corrective action plan, as determined by the  
39 director.

1 (k) Beginning in the 2011–12 fiscal year, and for each fiscal  
2 year thereafter, funding and expenditures for programs and  
3 activities required under this section shall be in accordance with  
4 the requirements provided in Sections 30025 and 30026.5 of the  
5 Government Code.

6 SEC. 9. Section 10850.4 of the Welfare and Institutions Code  
7 is amended to read:

8 10850.4. (a) Within five business days of learning that a child  
9 fatality has occurred in the county and that there is a reasonable  
10 suspicion that the fatality was caused by abuse or neglect, the  
11 custodian of records for the county child welfare agency, upon  
12 request, shall release the following information:

13 (1) The age and gender of the child.

14 (2) The date of death.

15 (3) Whether the child was in foster care or in the home of his  
16 or her parent or guardian at the time of death.

17 (4) Whether an investigation is being conducted by a law  
18 enforcement agency or the county child welfare agency.

19 (b) All cases in which abuse or neglect leads to a child’s death  
20 shall be subject to the disclosures required in subdivision (c). Abuse  
21 or neglect is determined to have led to a child’s death if one or  
22 more of the following conditions are met:

23 (1) A county child protective services agency determines that  
24 the abuse or neglect was substantiated.

25 (2) A law enforcement investigation concludes that abuse or  
26 neglect occurred.

27 (3) A coroner or medical examiner concludes that the child who  
28 died had suffered abuse or neglect.

29 (c) Upon completion of the child abuse or neglect investigation  
30 into the child’s death, as described in subdivision (b), the following  
31 documents from the juvenile case file shall be released by the  
32 custodian of records upon request, subject to the redactions set  
33 forth in subdivision (e):

34 (1) All of the information in subdivision (a).

35 (2) For cases in which the child’s death occurred while living  
36 with a parent or guardian, all previous referrals of abuse or neglect  
37 of the deceased child while living with that parent or guardian  
38 shall be disclosed along with the following documents:

39 (A) The emergency response referral information form and the  
40 emergency response notice of referral disposition form completed

1 by the county child welfare agency relating to the abuse or neglect  
2 that caused the death of the child.

3 (B) Any cross reports completed by the county child welfare  
4 agency to law enforcement relating to the deceased child.

5 (C) All risk and safety assessments completed by the county  
6 child welfare services agency relating to the deceased child.

7 (D) All health care records of the deceased child, excluding  
8 mental health records, related to the child's death and previous  
9 injuries reflective of a pattern of abuse or neglect.

10 (E) Copies of police reports about the person against whom the  
11 child abuse or neglect was substantiated.

12 (3) For cases in which the child's death occurred while the child  
13 was in foster care, the following documents in addition to those  
14 specified in paragraphs (1) and (2) generated while the child was  
15 living in the foster care placement that was the placement at the  
16 time of the child's death:

17 (A) Records pertaining to the foster parents' initial licensing  
18 and renewals and type of license or licenses held, if in the case  
19 file.

20 (B) All reported licensing violations, including notices of action,  
21 if in the case file.

22 (C) Records of the training completed by the foster parents, if  
23 in the case file.

24 (d) The documents listed in subdivision (c) shall be released to  
25 the public by the custodian of records within 10 business days of  
26 the request or the disposition of the investigation, whichever is  
27 later.

28 (e) (1) Prior to releasing any document pursuant to subdivision  
29 (c), the custodian of records shall redact the following information:

30 (A) The names, addresses, telephone numbers, ethnicity,  
31 religion, or any other identifying information of any person or  
32 institution, other than the county or the State Department of Social  
33 Services, that is mentioned in the documents listed in paragraphs  
34 (2) and (3) of subdivision (c).

35 (B) Any information that would, after consultation with the  
36 district attorney, jeopardize a criminal investigation or proceeding.

37 (C) Any information that is privileged, confidential, or not  
38 subject to disclosure pursuant to any other state or federal law.

39 (2) (A) The State Department of Social Services shall  
40 promulgate a regulation listing the laws described in subparagraph

1 (C) of paragraph (1) and setting forth standards governing  
2 redactions.

3 (B) Notwithstanding the rulemaking provisions of the  
4 Administrative Procedure Act (Chapter 3.5 (commencing with  
5 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
6 Code), until emergency regulations are filed with the Secretary of  
7 State, the State Department of Social Services may implement the  
8 changes made to Section 827 and this section at the 2007–08  
9 Regular Session of the Legislature through all-county letters or  
10 similar instructions from the director. The department shall adopt  
11 as emergency regulations, as necessary to implement those changes,  
12 no later than January 1, 2009.

13 (C) The adoption of regulations pursuant to this paragraph shall  
14 be deemed to be an emergency necessary for the immediate  
15 preservation of the public peace, health, safety, or general welfare.  
16 The emergency regulations authorized by this section shall be  
17 exempt from review by the Office of Administrative Law. The  
18 emergency regulations authorized by this section shall be submitted  
19 for filing with the Secretary of State and shall remain in effect for  
20 no more than 180 days, by which time the final regulations shall  
21 be adopted.

22 (f) Upon receiving a request for the documents listed in  
23 subdivision (c), the custodian of records shall notify and provide  
24 a copy of the request upon counsel for any child who is directly  
25 or indirectly connected to the juvenile case file. If counsel for a  
26 child, including the deceased child or any sibling of the deceased  
27 child, objects to the release of any part of the documents listed in  
28 paragraphs (2) and (3) of subdivision (c), they may petition the  
29 juvenile court for relief to prevent the release of any document or  
30 part of a document requested pursuant to paragraph (2) of  
31 subdivision (a) of Section 827.

32 (g) Documents from the juvenile case file, other than those listed  
33 in paragraphs (2) and (3) of subdivision (c), shall only be disclosed  
34 upon an order by the juvenile court pursuant to Section 827.

35 (h) Once documents pursuant to this section have been released  
36 by the custodian of records, the State Department of Social Services  
37 ~~or~~, the county welfare department or agency, *and any county child*  
38 *welfare social worker*, may comment on the case within the scope  
39 of the release.

1 (i) Information released by a custodian of records consistent  
2 with the requirements of this section does not require prior notice  
3 to any other individual.

4 (j) Each county welfare department or agency shall notify the  
5 State Department of Social Services of every child fatality that  
6 occurred within its jurisdiction that was the result of child abuse  
7 or neglect. Based on these notices and any other relevant  
8 information in the State Department of Social Services' possession,  
9 the department shall annually issue a report identifying the child  
10 fatalities and any systemic issues or patterns revealed by the notices  
11 and other relevant information. The State Department of Social  
12 Services, after consultation with interested stakeholders, shall  
13 provide instructions by an all-county letter regarding the procedure  
14 for notification.

15 (k) For purposes of this section, the following definitions apply:

16 (1) "Child abuse or neglect" has the same meaning as defined  
17 in Section 11165.6 of the Penal Code.

18 (2) "Custodian of records," for the purposes of this section and  
19 paragraph (2) of subdivision (a) of Section 827, means the county  
20 welfare department or agency.

21 (3) "Juvenile case files" or "case files" include any juvenile  
22 court files, as defined in Rule 5.552 of the California Rules of  
23 Court, and any county child welfare department or agency or State  
24 Department of Social Services records regardless of whether they  
25 are maintained electronically or in paper form.

26 (4) "Substantiated" has the same meaning as defined in Section  
27 11165.12 of the Penal Code.

28 (l) A person disclosing juvenile case file information as required  
29 by this section shall not be subject to suit in civil or criminal  
30 proceedings for complying with the requirements of this section.

31 (m) This section shall apply only to deaths that occur on or after  
32 January 1, 2008.

33 (n) Nothing in this section shall require a custodian of records  
34 to retain documents beyond any date otherwise required by law.

35 (o) Nothing in this section shall be construed as requiring a  
36 custodian of records to obtain documents not in the case file.

37 SEC. 10. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution for certain  
39 costs that may be incurred by a local agency or school district  
40 because, in that regard, this act creates a new crime or infraction,

1 eliminates a crime or infraction, or changes the penalty for a crime  
2 or infraction, within the meaning of Section 17556 of the  
3 Government Code, or changes the definition of a crime within the  
4 meaning of Section 6 of Article XIII B of the California  
5 Constitution.

6 However, if the Commission on State Mandates determines that  
7 this act contains other costs mandated by the state, reimbursement  
8 to local agencies and school districts for those costs shall be made  
9 pursuant to Part 7 (commencing with Section 17500) of Division  
10 4 of Title 2 of the Government Code.

O