

Executive Director
Robert C. Fellmeth

Council For Children
Gary F. Redenbacher, Chair
Gary Richwald, M.D., M.P.H., Vice-Chair
Robert L. Black, M.D.
John M. Goldenring, M.D., M.P.H., J.D.
Louise Horvitz, M.S.W., Psy.D.
Hon. Leon S. Kaplan (Ret.)
James B. McKenna
Thomas A. Papageorge
Gloria Perez Samson
Alan Shumacher, M.D.
Owen Smith

Emeritus Members
Birt Harvey, M.D.
Paul A. Peterson
Blair L. Sadler



Children's Advocacy Institute



University of San Diego School of Law
5998 Alcalá Park / San Diego, CA 92110
(619) 260-4806 / (619) 260-4753 (Fax)

717 K Street, Suite 509
Sacramento, CA 95814
(916) 444-3875 / (916) 444-6611 (Fax)

Reply to: San Diego Sacramento

www.cachildlaw.org

September 14, 2011

Contacts:

Bob Fellmeth, Elisa Weichel, Children's Advocacy Institute,
(619) 260-4806

Steve Keane, Morrison & Foerster, (858) 314-5474

Ed Howard, Children's Advocacy Institute, (916) 844-5646

FOR IMMEDIATE RELEASE

CHILD ADVOCATES SUE TO FORCE STATE TO LIFT SECRECY ON CHILD DEATHS

Lawsuit Challenges Regulations That Limit Information That Could Lead To Life-saving Reforms

San Diego, CA – Child advocates today sued the California Department of Social Services in San Diego County Superior Court, seeking to overturn regulations they say unlawfully allow counties to keep secret the possible causes of child deaths occurring when a county had an open child protective services file on the child.

A review of July to December 2006 child deaths by the University of San Diego's Children's Advocacy Institute found that of 53 child abuse/neglect fatalities reported, 41 (82%) had a history with child protective services and of those 28 (53%) had a history that was specifically related to the child fatality.

The suit was filed by Robert Butterfield, a Founder Emeritus Board Member of Promises2Kids (formerly known as the Child Abuse Prevention Foundation of San Diego). With the Institute and the law firm of Morrison & Foerster serving as counsel, the lawsuit alleges the regulations unlawfully block disclosure of key, child death-related documents by:

- Requiring a coroner to decree with complete certainty that a particular incident of abuse or neglect killed the child as a pre-condition to disclosure. If a county knew a child had a lengthy history of malnourishment, left the child with her parents, and the child later dies on the

playground, key county documents remain secret if the autopsy concludes that the immediate cause of death was heat exhaustion.

- Requiring as a pre-condition to disclosure the police to be consulted about whether documents should be released, when the statute says only District Attorneys responsible for proving cases in court are to be consulted. This regulatory requirement endures even though the Department has conceded it is illegal.
- Requiring that documents be kept secret no matter how much the county knew about the risks to the child if the child happens to die in a day care facility that is not located in a residence.
- Requiring as a pre-condition to disclosure the child to have been killed by the parent, guardian, or foster parent in whose home the child was residing at the time of death. This means documents revealing what happened when live-in boyfriends or grandparents kill children are kept secret. The Department's own 2009 data show that the parent/guardian was identified as the alleged perpetrator in only 63 percent of cases. See California Department of Social Services, California Fatality and Near Fatality Annual Report, Calendar Year 2009 (May 2011) at 23.

"The State Department of Social Services should be on the side of shining a light on what happens when kids die on a county's watch," said Butterfield. "Instead, the Department has acted to keep parents, relatives, and the community that pays the county's bills, in the dark about whether a reform of county operations might prevent future child deaths."

Bob Fellmeth, Price Professor of Public Interest Law at the University of San Diego School of Law and the Founder of the Institute, said, "the Department's priorities are exactly backwards. In implementing this child safety law, the Department should be demanding the maximum transparency and accountability from counties. It shouldn't be allowing counties to keep its operations secret, especially when child deaths are involved."

The lawsuit seeks to enforce Senate Bill 39, enacted in 2007. The bill says its intent is to "promote public scrutiny and an informed debate of the circumstances that led to the fatality thereby promoting the development of child protection policies, procedures, practices, and strategies that will reduce or avoid future child deaths and injuries."

According to the Department, more than 100 California children die each year due to abuse and/or neglect. See California Department of Social Services, California Fatality and Near Fatality Annual Report, Calendar Year 2009 (May 2011) at 5.