Sharing Information From Juvenile Agency Files Regarding Children in Foster Care

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I. INTRODUCTION

County placing agencies play a critical role coordinating care for and facilitating delivery of services to youth receiving child welfare services. To fulfill this obligation, child welfare and probation agencies must be able to disclose relevant information about foster youth and their families to appropriate parties, such as health care providers, schools, juvenile courts, and foster caregivers.[1] However, probation and child welfare also must honor federal and state laws that protect both the confidentiality of agency files generally and the confidentiality and privilege of certain information within those files. While they may appear to conflict, the applicable laws do allow a placing agency to satisfy its obligations in both regards. This brief provides an overview of the relevant laws, with a focus on section 827 of the Welfare and Institutions Code.

The Judicial Council prepared this brief to assist in the discussion of how best to facilitate appropriate disclosures from agency files. The brief is not intended as an **exhaustive legal analysis**; rather it is intended to provide a basis for further discussions about how to ensure child welfare, probation, health care providers, schools, attorneys, juvenile courts, and foster caregivers obtain the information they need to better serve children in foster care. The information in this brief applies to both dependent and juvenile justice involved children who are placed in foster or group care settings.

II. FEDERAL AND STATE LAWS

A. LAWS THAT REQUIRE PLACING AGENCIES TO MAINTAIN HEALTH AND EDUCATION INFORMATION IN EACH CHILD'S CASE PLAN

- Federal and state laws require child welfare agencies to maintain health and education information in their files. Title IV-E of the Social Security Act (42 U.S.C. § 670 et seq.) requires child welfare agencies to maintain health, mental health, and education records for children in foster care. (42 U.S.C. §§ 671(a)(16), 675(1)(C).) State law also requires the child welfare agency to maintain in its files for each child in foster care a case plan that includes a health and education summary. (Welf. & Inst. Code, § 16010(a).) Companion briefings in this series address the legal authority of schools,

[1] The agency's ability to obtain this information from schools, health care providers, and other sources is addressed in four companion Judicial Council Briefings: *Sharing Mental Health Information About Children in Foster Care*, *Sharing Health Information for Children in Foster Care, Sharing Substance Abuse Treatment Information for Children in Foster Care,* and *Sharing Education Information for Children in Foster Care.*

health care providers, and others to disclose health and education information to child welfare and probation agencies for this purpose.[2]

B. LAWS THAT REQUIRE PLACING AGENCIES TO PROVIDE INFORMATION TO SPECIFIED INDIVIDUALS AND ENTITIES

- Once health and education information are in the file, federal and state law requires agencies to share it with specified individuals and agencies. Title IV-E of the Social Security Act requires states to have a case review system that includes procedures for ensuring a copy of a child's health and education record is given to the foster parent or foster care provider with whom the child is placed. (42 U.S.C. §§ 671(a)(16), 675(5)(D).) States also must have procedures for ensuring a copy of the health and education record is given to the child at no cost at the time the child leaves foster care, if leaving by reason of attaining majority. (42 U.S.C. § 675(5)(D).)

- The state plan also must include a plan for ensuring the educational stability of a child while the child is in foster care as well as a plan to coordinate health care for foster children. The state plan must include a plan for the exchange of school records when immediate enrollment of the youth in a new school is needed, a coordinated strategy to identify and respond to health care needs, as well as provisions that consider the appropriate sharing of medical and mental health information. (42 U.S.C. §§ 675(1)(G), 622(b)(15)(A).)

- State law requires the child welfare agency to include a child's health and education summary in court reports. (Welf. & Inst. Code, §§ 16501.1(g)(14), 16010(b).) For nonminor dependents, this summary is only included in the court report with written consent from the dependent. (Welf. & Inst. Code, § 16010(b).) State law also requires the probation officer to furnish the juvenile court with the information it requires in dispositional hearings, including a social study with any information that may be relevant to a proper disposition. (Welf. & Inst. Code, § 280.)

- State law requires the child welfare placing agency to provide a caretaker with a copy of the child's current health and education summary (Welf. & Inst. Code, § 16010(c)), as well as medication and treatment information about foster youth in their care. (*See* Welf. & Inst. Code, § 16010.5(a); *see also* Welf. & Inst. Code, § 16501.1(j).) The Legislature has declared that "sharing necessary information with the caregiver is a critical component of effective

[2] *Ibid.*

service delivery for children and youth in foster care." (Welf. & Inst. Code, § 827.11(a)(5).)

- The federal *Child Welfare Policy Manual* and the California Department of Social Services (CDSS) *Child Welfare Services Manual* include provisions requiring child welfare caseworkers to provide information to certain individuals and agencies. For example, the CDSS manual requires that the caseworker "provide respite and out-of-home care providers information of any known or suspected dangerous behavior of the child." (CDSS, *Policies and Procedures Manual: Child Welfare Services* (1993), p. 82, 31-310.16.)

C. LAWS THAT LIMIT AND CONTROL RELEASE OF CHILD WELFARE, PROBATION, AND JUVENILE COURT FILES

TITLE IV-E OF THE FEDERAL SOCIAL SECURITY ACT

Title IV-E of the Social Security Act requires that states that receive federal child welfare funds have a state plan, approved by the Secretary, that "provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan." (42 U.S.C. § 671(a)(8).)

THE FEDERAL CHILD ABUSE PREVENTION AND TREATMENT ACT

The Child Abuse Prevention and Treatment Act (CAPTA) requires that states include in their state plan assurances that their state program will preserve the confidentiality of reports and records made and maintained under CAPTA to protect the rights of children and their parents, and it specifies a limited list of individuals and agencies to which these records may be made available. (42 U.S.C. § 5106a(b)(2)(B)(viii).)

SECTION 827 OF THE WELFARE AND INSTITUTIONS CODE

Section 827 limits access to the "juvenile case file." The definition of "juvenile case file" is slightly different in statute, court rule, and case law.

In statute, the definition of "juvenile case file" is "a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making the probation officer's report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." (Welf. & Inst. Code, § 827(e).)

The California Rules of Court define "juvenile case file" by incorporating the definition from section 827 but adding reference to reports and documents of "social workers of child welfare programs, and CASA volunteers" in addition to the probation officer, and including

reference to reports, exhibits, photographs, and other items in addition to reports and documents. (Cal. Rules of Court, rule 5.552(a).)

Some courts have interpreted the definition of "juvenile case file" in section 827(e) broadly to include any documents and other information housed in a county child welfare agency file regarding a child who has suffered or is at serious risk of suffering abuse or neglect that brings the child within the jurisdiction of the juvenile court under section 300. This includes information in agency files where no juvenile court proceedings have been instituted and the matter is handled informally. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 780–781; *In re Elijah S.* (2005) 125 Cal.App.4th 1532 [24 Cal.Rptr.3d 16, 23–24, 30]. *See* 87 Ops.Cal.Atty.Gen. 72, 75 (2004).)

Access to information in the juvenile court file is also controlled by section 827. The juvenile court file includes "the order and findings of the superior court in each case" as entered in written record. (Welf. & Inst. Code, § 825.)

SECTION 827.9 OF THE WELFARE AND INSTITUTIONS CODE

Section 827.9 protects the confidentiality and limits release of "juvenile police records." Section 827.9 defines "juvenile police record" as "records or information relating to the taking of a minor into custody, temporary custody, or detention." (Welf. & Inst. Code, § 827.9(a), (m).) This section only applies to Los Angeles county. (Welf. & Inst. Code, § 827.9(p).)

SECTION 10850 OF THE WELFARE AND INSTITUTIONS CODE

Section 10850 of the Welfare and Institutions Code protects the confidentiality of any records made or kept by any public officer or agency concerning any individual in connection with the administration of any provision of the Welfare and Institutions Code relating to any form of "public social services" for which grants-in-aid are received by the state from the federal government. (Welf. & Inst. Code, § 10850(a).)

Public social services include activities of state and local government administered or supervised by CDSS that provide aid or services to those who, because of their economic or social condition, are in need and may benefit. (Welf. & Inst. Code, §§ 10051, 10850(a) & (f).)

Protected information includes all applications and records kept in connection with the administration of child welfare that identifies the applicant or recipient by name or address. (Welf. & Inst. Code, § 10850(a).)

Case law says that records in a child welfare agency file regarding the parent of a child under court jurisdiction are protected by section 10850. (*Lorenza P. v Superior Court* (1988) 197 Cal.App.3d 607, 612 [242 Cal.Rptr. 877, 879].

Case law says that sections 10850 and 827 do not purport to deal with the same subject matter, though there can be some overlap at times. (*In re Keisha T.* (1985) 38 Cal.App.4th 220, 238 [44 Cal.Rptr.2d 822, 832].)

Case law says that the focus of section 10850 is the confidentiality of the identity of aid recipients. (*In re Keisha T.* (1985) 38 Cal.App.4th 220, 238 [44 Cal.Rptr.2d 822, 832].)

D. LAWS THAT PROTECT THE CONFIDENTIALITY AND PRIVILEGE OF CERTAIN INFORMATION IN JUVENILE CASE FILES

Several federal and state statutes protect the confidentiality and privilege of sensitive information often found in agency files. Information that may be protected by additional confidentiality or privilege rules include but are not limited to:

- Education
- Gender identity and expression
- Health
- Mental health
- Sexual and reproductive health
- Sexual orientation
- Substance use treatment, and
- Child abuse reports.

Child welfare, probation, and the juvenile court must honor any applicable federal and state confidentiality and privilege laws that apply to information housed in the case file, in addition to any laws that protect the confidentiality of the child welfare file generally. (*See* Welf. & Inst. Code, § 827(a)(3)(A); Cal. Rules of Court, rule 5.552(f).) **Section V and Appendix B** describe these statutes and their application in more detail.

III. APPLICATION: WHEN AND TO WHOM CHILD WELFARE MAY AND MUST RELEASE INFORMATION PROTECTED BY SECTION 827

A. RELEASE OF INFORMATION FROM AGENCY FILE WITHOUT NEED OF A COURT ORDER

1. RIGHT TO INSPECT FOR ALL INDIVIDUALS AND AGENCIES LISTED IN SECTION 827, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- Section 827 authorizes certain individuals and agencies to access information in the child welfare agency file without need of a court order. Section 827 grants different levels of access rights to different individuals. Some individuals and agencies are authorized to inspect and receive copies of information whereas others are authorized only to inspect information.

Authorization to inspect records does not include the authority to copy records. (*In re Gina S.* (2005) 133 Cal.App.4th 1074, 1082 [35 Cal.Rptr.3d 277, 282].) **Appendix A** provides a complete description of the individuals and entities able to inspect records under section 827.

- If any information in the child welfare file is protected by additional confidentiality and privilege laws, the child welfare agency only may release those parts, absent a court order, to any individual or agency that is both (1) described in section 827 as authorized to inspect or receive copies of information in the child welfare file and (2) "entitled to access [the information] under the other state law or federal law or regulation without a court order." (Welf. & Inst. Code, § 827(a)(3)(A); *see* Cal. Rules of Court, rule 5.552(g): "Under no circumstances must this rule or any section of it be interpreted to permit access to or release of records protected under any other federal or state law … except as provided in those statutes … .") **Section V**, above, and **Appendix B** provide more information.

2. RIGHT TO COPIES FOR CERTAIN INDIVIDUALS AND AGENCIES LISTED IN SECTION 827, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- Section 827 authorizes certain individuals and agencies to access information in the child welfare agency file without need of a court order. Section 827 grants different levels of access rights to different individuals. Some individuals and agencies are authorized to inspect and receive copies of information whereas others are authorized only to inspect information. Authorization to inspect records does not include the authority to copy records. (*In re Gina S.* (2005) 133 Cal.App.4th 1074, 1082 [35 Cal.Rptr.3d 277, 282].) **Appendix A** provides a complete description of the individuals and entities able to inspect or receive copies of records under section 827.

- If any information in the child welfare file is protected by additional confidentiality and privilege laws, the child welfare agency only may release those parts, absent a court order, to any individual or agency that is both (1) described in section 827 as authorized to inspect or receive copies of information in the child welfare file and (2) "entitled to access [the information] under the other state law or federal law or regulation without a court order." (Welf. & Inst. Code, § 827(a)(3)(A); *see* Cal. Rules of Court, rule 5.552(g): "Under no circumstances must this rule or any section of it be interpreted to permit access to or release of records protected under any other federal or state law … except as provided in those statutes … .") **Section V** and **Appendix B** provide more information.

3. RIGHT TO INSPECT AND COPIES FOR TRIBAL COURTS AND CERTAIN INDIVIDUALS SERVING TRIBES, RESERVATIONS, AND TRIBAL COURTS, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- Section 827 grants inspection and copying rights to individuals and agencies serving in specific capacities for an Indian tribe, reservation or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(a)(5), (f).)

- In addition, whenever the juvenile court has made a determination that a child custody proceeding will be transferred to the jurisdiction of a tribal court, the "child's case file" must be transferred to the tribal court. (Welf. & Inst. Code, § 827.15(a).)

- In all other transfers, the juvenile court "shall order" the release of the "child's case file" to the tribal court "provided that the tribe agrees to maintain the documentation confidential consistent with state and federal law." (Welf. & Inst. Code, § 827.15(c).)

- For these purposes, "child's case file" includes information including the juvenile case file retained by the juvenile court and the child welfare agency files or records retained by the county. For Title IV-E tribes or a Tribal Title IV-E agency that information includes, but need not be limited to, the documentation set forth in 45 C.F.R. 1356.67. (Welf. & Inst. Code, § 827.15(d).)

4. RIGHT TO INFORMATION FOR CAREGIVERS AND PROSPECTIVE CAREGIVERS, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- State law requires the child welfare placing agency to provide a caregiver with a copy of the child's current health and education summary (Welf. & Inst. Code, § 16010(c)), as well as medication and treatment information about foster youth in their care, including instructions for use of medication. (Welf. & Inst. Code, § 16010.5(a); *see* Welf. & Inst. Code, § 16501.1(j).). The agency also shall provide any available documentation of the child's age and a copy of the child's birth certificate or passport, if available and may provide contact information for the child's attorney or court-appointed special advocate (CASA). (Welf. & Inst. Code, § 16010.5.)

- In addition, prior to placement, the child protective agency may disclose to caregivers or prospective caregivers the following: the "health and education passport," as that term is described in section 16010, the placement history, and any underlying source documents that are provided to adoptive parents pursuant to Family Code section 8706(a) and (b), but only if all of the following requirements are met:

(A) The child protective agency intends to place the child with the prospective caregiver or caregivers.

(B) The prospective caregiver or caregivers are willing to become the adoptive parent or parents of the child.

(C) The prospective caregiver or caregivers have an approved adoption assessment or home study, a foster family home license, certification by a licensed foster family agency, or approval pursuant to the requirements in Sections 361.3 and 361.4.

(Welf. & Inst. Code, § 16010(d).)

5. RIGHT TO INFORMATION AND COPIES FOR FOSTER YOUTH, FORMER FOSTER YOUTH, AND NONMINOR DEPENDENTS

- A minor who is subject of a proceeding may receive a copy of the minor's own file. (Welf. & Inst. Code, § 827(a)(1).)

- At the first regularly scheduled review hearing held pursuant to subdivision (d) of Section 366.3 after a dependent child has attained 16 years of age, the county welfare department shall submit a report verifying that the child received certain information and documents, including the child's social security card, if provided for certain purposes, and a copy of the birth certificate. (Welf. & Inst. Code, § 391(a)(1).)

- At the last regularly scheduled review hearing held pursuant to subdivision (d) of Section 366.3 before a dependent child attains 18 years of age, the county welfare department shall submit a report verifying that the youth received certain information and documents, including social security card, birth certificate, a letter that includes the dates during which the child was within the jurisdiction of the juvenile court and a statement that the youth was in foster care in compliance with state and federal financial aid documentation requirements, among other information. (Welf. & Inst. Code, § 391(b).)

- As well, "the State Department of Social Services may provide to a person who was previously adjudged a dependent or ward of the juvenile court, was placed in foster care, and whose dependency or wardship has been dismissed, upon request by that person, the information included in the proof of dependency or wardship document described in subparagraph (E) of paragraph (2) of subdivision (e) of Section 391, or any information necessary to provide verification that the person was formerly a dependent or ward of the juvenile court and placed in foster care" in order to assist with establishing eligibility for programs or services. (Welf. & Inst. Code, § 826.8.)

6. AGENCY DISCRETION TO RELEASE COPIES TO CERTAIN INDIVIDUALS ACTIVELY PARTICIPATING IN FAMILY AND PROBATE COURT MATTERS, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- Under section 827.10, the child welfare agency may "permit" specified individuals to inspect or receive copies of child welfare agency files protected by section 827 during certain family or probate court matters without need of a court order.

- Section 827.10 says: "Notwithstanding section 827, the child welfare agency is authorized to permit its files and records relating to a minor, who is the subject of either a family law or a probate guardianship case involving custody or visitation issues, or both, to be inspected by, and to provide copies to, the following persons, if these persons are actively participating in the family law or probate case." These "persons" include but are not limited to

  - the "judge or hearing officer assigned to the family law or probate case";
  - "the parent or guardian of the minor";
  - an "attorney for a party to the family law or probate case";
  - "a family court mediator assigned to a case involving the minor";
  - "a court appointed investigator"; and
  - "counsel appointed for the minor in the family law case."

(Welf. & Inst. Code, § 827.10(a).)

- Section 827.10 also allows a social worker to testify in any family or probate proceeding with regard to any information that may be disclosed under this section. (Welf. & Inst. Code, § 827.10(c).)

- The child welfare agency must follow all applicable laws protecting the privilege or confidentiality of information in their files if that applicable law would prohibit or limit release of some or all information in the file. (Welf. & Inst. Code, § 827.10(b).) (For discussion of other applicable confidentiality laws, see **Section III** and **Appendix B**.)

- Information released must be maintained in the confidential portion of the family law or probate file. (Welf. & Inst. Code, § 827.10(d).)

- Section 827 gives some of these same individuals and agencies a right to inspect but not receive copies of information in the child welfare file. (*See* Welf. & Inst. Code, § 827(a)(1)(L), (a)(5).) Section 827.10 allows the child welfare agency to provide these individuals copies of the files and records.

7. DISCRETION TO SHARE RELEVANT INFORMATION AND WRITINGS WITH CERTAIN TYPES OF MULTIDISCIPLINARY TEAMS, FOR SPECIFIED PURPOSES, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- Section 827 authorizes "members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor" to *inspect but not receive copies* of information in the child welfare agency file without need of a court order. (Welf. & Inst. Code, § 827(a)(1)(K), (a)(5).) The statute does not define "multidisciplinary team" for this purpose.

- However, the agency is permitted to release information, *including writings*, to members of multidisciplinary teams created pursuant to certain statutes, including Welfare and Institutions Code sections 18951 and 18961.7 ["18951 MDTs" and "18961.7 MDTs"] and Penal Code section 13753, among others, notwithstanding the limits in section 827. As a few examples:

- **Section 830** authorizes child welfare agencies to disclose to and exchange information and writings in the child welfare agency file with **18951 MDT team** members notwithstanding section 827 "if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, management, or treatment of child abuse, or the provision of child welfare services." (Welf. & Inst. Code, § 830; *see* Welf. & Inst. Code, § 18951.)

- **Section 18961.7** authorizes child welfare agency team members to release information or writings in the child welfare agency file to 18961.7 MDT members "if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse" and the disclosure occurs within "a 30-day period, or longer if documented good cause exists, following a report of suspected child abuse or neglect." (Welf. & Inst. Code, § 18961.7(c)(1).)

- **Section 13753** of the Penal Code authorizes child welfare agency social workers to release information or writings that relate to any incident of human trafficking to 13753 MDT members "if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of human trafficking" following a report of suspected human trafficking. (Pen. Code, § 13753(b)(9), (c).)

- Authorized and governed by different laws, **18961.7 MDTs, 18951 MDTs and 13753 MDTs** are different entities. For example, an 18951 MDT must have at least three members while an 18961.7 MDT may have as few as two members. Sections 830, 18951, 18961.7 and 13753 limit how MDT team members may use and re-disclose information once shared. The statutes also address whether or not team members can share information that may be

protected by additional confidentiality and privilege laws with other team members.

- **Appendix C** provides more detail about each of these teams and the differences between them.

8. DISCRETION TO SHARE RELEVANT INFORMATION WITH A CHILD AND FAMILY TEAM (CFT), SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- The child welfare agency must engage and consider the recommendations of a "child and family team" in developing a case plan for a youth. (Welf. & Inst. Code, § 16501(a).)

- "Child and family team" for this purpose is defined as "a group of individuals who are convened by the placing agency and who are engaged through a variety of team-based processes to identify the strengths and needs of the child or youth and his or her family, and to help achieve positive outcomes for safety, permanency, and well-being." (Welf. & Inst. Code, § 16501(a).)

- Section 832 authorizes the child welfare agency to disclose "relevant information" from a juvenile case file to members of a "child and family team," as defined in section 16501. However, the agency must honor any state or federal confidentiality or privilege law that additionally applies to information in its file in determining what can be disclosed and use authorizations to release information as described in the statute. (Welf. & Inst. Code, § 832(a)(1), (a)(2), (b) & (e).)

- Upon obtaining the authorization to release information as described in the statute, relevant information and records may be shared with members of the team. If the team determines that the disclosure of information would present a reasonable risk of a significant adverse or detrimental effect on the child's or youth's psychological or physical safety, the information shall not be released. (Welf. & Inst. Code, § 832(c).)

- Information exchanged among team members shall be received in confidence for the limited purpose of providing necessary services and supports to the child or youth and family. There are specific requirements regarding confidentiality and disclosure of information during and with a CFT, including re-disclosure limitations as well as restrictions on providing testimony concerning a team meeting discussion. (Welf. & Inst. Code § 832(a)(2), (d), (f)–(h).)

- By July 1, 2021, the Department of Social Services must issue written instructions to counties that describe all protections provided by statute for the confidentiality of mental health, reproductive and sexual health, and minor drug treatment information concerning minors and nonminor

dependents for whom a child and family team meeting is held, including, but not limited to, the duties of therapists not to disclose confidential information, as described in Sections 123115 and 123116 of the Health and Safety Code and Section 1015 of the Evidence Code.

- If the county has produced a summary report or action plan of the CFT for use by team members, a copy of that report with any necessary redactions necessary to address confidentiality and privilege may be attached to the court report. (Welf. & Inst. Code, §§ 358.2, 366.2.)

- **Appendix C** provides more information on child and family teams.

B. RELEASE OF INFORMATION OR COPIES BY COURT ORDER

- The juvenile court has the authority to authorize access to a juvenile case file upon petition. A court order is necessary when:

  - Individuals and agencies not specifically authorized to *inspect* a juvenile case file wish to obtain access.
  - Individuals and agencies allowed to *inspect but not receive copies* of a juvenile case file wish to obtain copies.

(Welf. & Inst. Code, § 827(a)(1)(Q); Cal. Rules of Court, rule 5.552(b).)

- The process for obtaining a court order is set out in court rules. (Cal. Rules of Court, rule 5.552(b)–(d).) The procedure and standard for obtaining a court order is different if the petitioner wants to obtain access to the juvenile case file of a deceased child. There is also a different standard if the petitioner wants to obtain records in a juvenile case file that are protected by additional confidentiality or privilege laws are both different. (Compare Cal. Rules of Court, rule 5.552(d) with Welf. & Inst. Code, § 827(a)(2), (3)(A).)

- Parties to civil and criminal cases as well as the press have obtained access to information in child welfare agency files under these court orders. (*In re Keisha T.* (1985) 38 Cal.App.4th 220, 238 [44 Cal.Rptr.2d 822, 832], reviewing prior decisions in which other individuals, such as the press and parties to civil and criminal cases, were granted access to files.)

C. RELEASE OF INFORMATION PROTECTED BY SECTION 10850

- Section 10850 allows child welfare agencies to release protected information for purposes directly connected with the administration of the child welfare system or any criminal investigation or prosecution conducted in connection with the administration of such a program. (Welf. & Inst. Code, § 10850(a).)

- Information can also be released to school superintendents as necessary for the administration of federally assisted programs providing need-based services to individuals. (Welf. & Inst. Code, § 10850(d).)

- Limited information including a name, physical description, and address can also be given to a law enforcement agency investigating a criminal act. (Welf. & Inst. Code, § 10850(b), (e).)

- County child welfare departments may release lists of recipients of public social services to other county welfare departments and the CDSS for purposes directly connected with the administration of public social services. (Welf. & Inst. Code, § 10850(b).)

IV. APPLICATION: WHEN AND TO WHOM PROBATION, LAW ENFORCEMENT, AND JUVENILE COURTS MAY AND MUST RELEASE INFORMATION REGARDING YOUTH WHO HAVE BEEN ADJUDICATED UNDER SECTION 601 OR 602

A. RELEASE OF INFORMATION FROM AGENCY FILE WITHOUT NEED OF A COURT ORDER

1. INSPECTION AND RIGHTS TO COPY FOR INDIVIDUALS AND AGENCIES LISTED IN SECTION 827, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- Individuals and agencies listed in section 827 may inspect a probation agency file without need of a court order. This does not apply to records sealed by order of a court pursuant to sections 781 or 786. (Welf. & Inst. Code, § 827(g)). For access to records sealed by the court, see **subsection E**, below.

- Section 827 grants different levels of access rights to different individuals. Some individuals and agencies are authorized to inspect and receive copies of information whereas others are authorized only to inspect information. Authorization to inspect records does not include the authority to copy records. (*In re Gina S.* (2005) 133 Cal.App.4th 1074, 1082 [35 Cal.Rptr.3d 277, 282].) **Appendix A** provides a complete description of the individuals and entities able to inspect and receive copies of records under section 827.

- If parts of the probation file are protected by other confidentiality and privilege laws, the probation agency may release those parts, absent a court order, to any individual or agency that is both (1) described in section 827 as authorized to inspect or receive copies of information in the child welfare file and (2) authorized to access or receive the records or information under the other applicable confidentiality or privilege law. (Cal. Rules of Court, rule 5.552(g): "Under no circumstances must this rule or any section of it be

interpreted to permit access to or release of records protected under any other federal or state law … except as provided in those statutes … .")

Appendix B includes examples highlighting how additional confidentiality laws may apply in practice.

2. RIGHT TO INSPECT AND TO COPY FOR TRIBAL COURTS AND CERTAIN INDIVIDUALS SERVING TRIBES, RESERVATIONS, AND TRIBAL COURTS, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- Section 827 grants inspection and copying rights to individuals and agencies serving in specific capacities for an Indian tribe, reservation or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(a)(5), (f).)

3. RIGHT TO INFORMATION FOR CAREGIVERS AND PROSPECTIVE CAREGIVERS IN FOSTER CARE PLACEMENT, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- State law requires the child welfare placing agency to provide a caregiver with a copy of the child's current health and education summary (Welf. & Inst. Code, § 16010(c)), as well as medication and treatment information about foster youth in their care, including instructions for use of medication. (Welf. & Inst. Code, § 16010.5(a); *see* Welf. & Inst. Code, § 16501.1(j).). The agency also shall provide any available documentation of the child's age and a copy of the child's birth certificate or passport, if available and may provide contact information for the child's attorney or court-appointed special advocate (CASA). (Welf. & Inst. Code, § 16010.5.*)*

- In addition, prior to placement, the child protective agency may disclose to prospective caregivers or caregivers the following: the "health and education passport," as that term is described in section 16010, the placement history, and any underlying source documents that are provided to adoptive parents pursuant to Family Code section 8706(a) and (b), but only if all of the following requirements are met:

(A) The child protective agency intends to place the child with the prospective caregiver or caregivers.

(B) The prospective caregiver or caregivers are willing to become the adoptive parent or parents of the child.

(C) The prospective caregiver or caregivers have an approved adoption assessment or home study, a foster family home license, certification by a licensed foster family agency, or approval pursuant to the requirements in Sections 361.3 and 361.4.

(Welf. & Inst. Code, § 16010(d).)

4. RIGHT TO INFORMATION AND COPIES FOR YOUTH, FORMER FOSTER YOUTH, AND FORMER WARDS

- A minor who is subject of a proceeding may receive a copy of the minor's own file. (Welf. & Inst. Code, § 827(a)(1).)

- "Notwithstanding Section 827 and in order to assist with establishing eligibility for programs or services, the State Department of Social Services may provide to a person who was previously adjudged a dependent or ward of the juvenile court, was placed in foster care, and whose dependency or wardship has been dismissed, upon request by that person, the information included in the proof of dependency or wardship document described in subparagraph (E) of paragraph (2) of subdivision (e) of Section 391, or any information necessary to provide verification that the person was formerly a dependent or ward of the juvenile court and placed in foster care." (Welf. & Inst. Code, § 826.8.)

5. DISCRETION TO SHARE RELEVANT INFORMATION AND WRITINGS WITH CERTAIN TYPES OF MULTIDISCIPLINARY TEAMS, FOR SPECIFIED PURPOSES, SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- Section 827 authorizes "members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor" to *inspect but not receive copies* of information in an agency file without need of a court order. (Welf. & Inst. Code, § 827(a)(1)(K) & (a)(5).) The statute does not define "multidisciplinary team" for this purpose.

- In addition, other statutes allow the probation agency to participate in multidisciplinary teams and release information, *including writings*, to members of multidisciplinary teams created pursuant to those sections, notwithstanding the limits in section 827. (see, e.g., Welf. & Inst. Code, § 830.1; Pen. Code, §§ 13752, 13753.) In addition to the examples already discussed in **Section IV** and **Appendix C**, one additional example follows:

- **Section 830.1** authorizes probation agencies to disclose and exchange nonprivileged information and writings in the probation file "relating to any incidents of juvenile crime, including street gang activity" to members of a "**juvenile justice multidisciplinary team**" notwithstanding section 827 "if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or control of juvenile crime or criminal street gang activity." (Welf. & Inst. Code, § 830.1.)

- A juvenile justice multidisciplinary team for the purpose of section 830.1 "means any team of three or more persons, the members of which are trained in the prevention, identification, and control of juvenile crime, including, but not limited to, criminal street gang activity, and are qualified to provide a broad range of services related to the problems posed by juvenile crime and criminal street gangs." This team may include law enforcement, probation officers, prosecutors, and counseling and school district personnel with experience or training in juvenile crime or criminal street gang control. (Welf. & Inst. Code, § 830.1.)

- Section 830.1 defines both "nonprivileged information" and "criminal street gang" for purposes of this exception. (Welf. & Inst. Code, § 830.1.)

- Section 830.1 limits how MDT team members may use and re-disclose information once shared and requires the information be maintained in a way that protects confidentiality. (Welf. & Inst. Code, § 830.1.)

6. DISCRETION TO SHARE RELEVANT INFORMATION WITH A CHILD AND FAMILY TEAM (CFT), SUBJECT TO APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

- The probation agency must engage and consider the recommendations of a "child and family team" in developing a case plan for a youth. (Welf. & Inst. Code, §§ 706.5, 706.6, 16501(a).)

- "Child and family team" for this purpose is defined as "a group of individuals who are convened by the placing agency and who are engaged through a variety of team-based processes to identify the strengths and needs of the child or youth and his or her family, and to help achieve positive outcomes for safety, permanency, and well-being." (Welf. & Inst. Code, § 16501(a).)

- Section 832 authorizes the agency to disclose "relevant information" from a juvenile case file to members of a "child and family team," as defined in section 16501. However, the agency must honor any state or federal confidentiality or privilege law that additionally applies to information in its file in determining what can be disclosed. (Welf. & Inst. Code, § 832(a)(1), (a)(2), (e).) **Section III.A.8.** and **Appendix C** provide more information.

- If the county has produced a summary report or action plan of the CFT for use by team members, a copy of that report with any necessary redactions necessary to address confidentiality and privilege may be attached to the court report. (Welf. & Inst. Code, §§ 358.2, 366.2.)

7. DISCRETION TO SHARE JUVENILE DELINQUENCY INFORMATION FOR PURPOSE OF DATA REPORTING, DATA SHARING, AND JUVENILE JUSTICE RESEARCH

- Section 827.12 authorizes certain agencies to access a "juvenile delinquency file" "for the limited purpose of complying with data collection or data reporting requirements that are imposed under the terms of a grant or by another state or federal law." There are limitations on re-disclosure and disclosure of any dependency information that may also be in that file. (Welf. & Inst. Code, § 827.12(a)(1), (c).)

- Additionally, section 827.12 states that the court may authorize the probation department to provide data contained in juvenile delinquency case file and related juvenile records to others "for the purpose of data sharing or conducting or facilitating research on juvenile justice populations, practices, policies, or trends" if certain conditions are met. (Welf. & Inst. Code, § 827.12(a)(2).) There are limitations on disclosure of any dependency information that may also be in that file. (Welf. & Inst. Code, § 827.12(c).)

- In all cases, there are special rules for release of information related to human subject research. (Welf. & Inst. Code, § 827.12(a)(2).)

B. JUVENILE COURT: REQUIRED NOTICE TO AGENCIES AND INDIVIDUALS REGARDING CERTAIN ADJUDICATIONS

- Section 827 requires the court to provide written notice to the superintendent of the school district of attendance when minors enrolled in the district have been found to have committed certain offenses. The notice shall only include the offense and disposition of the case. The statute further requires transmission of this information to others; however, there are strict limitations on additional dissemination and on maintaining confidentiality of information received. (Welf. & Inst. Code, § 827(b)–(d).)

- The court also must provide written notice that a minor has been found to have committed any felony pursuant to section 602 "to the sheriff of the county in which the offense was committed and to the sheriff of the county in which the minor resides." (Welf. & Inst. Code, § 827.2(a).) This information can only include "information regarding the felony offense found to have been committed by the minor and the disposition of the minor's case." (Welf. & Inst. Code, § 827.2(a), 827.7(a).) The information must be received in confidence and not further disseminated; however, the sheriff has discretion to disseminate the information to other law enforcement upon request, upon reasonable belief that the release of this information is generally relevant to the prevention or control of juvenile crime. And law enforcement may disclose the information described above regarding a minor 14 or older who was found to have committed any felony

enumerated in subdivision (b) of section 707 to the public, unless the court for good cause, with a written statement of reasons, so orders. (Welf. & Inst. Code, § 827.2(c); compare to § 827.7.)

C. LAW ENFORCEMENT: MANDATORY AND DISCRETIONARY DISCLOSURES FROM AN UNSEALED JUVENILE POLICE FILE

- Section 827.9 requires a law enforcement agency to release a complete copy of a "juvenile police record," upon request, without notice or consent from the person who is the subject of the juvenile police record, to certain specified individuals. (Welf. & Inst. Code, § 827.9(b).) Additional persons also have a right to copies of the file, with certain information redacted, including the youth, the youth's parents, and the attorney for the youth's parents. (Welf. & Inst. Code, § 827.9(c), (d).)

- Others may obtain a copy of the juvenile police record upon obtaining an order from the juvenile court, after filing a petition with the presiding judge. The court must apply the standard described in subdivision (f) of section 827.9 in determining whether to issue such an order. Any information received must be received in confidence for the limited purposes for which it was provided and cannot be further disseminated. (Welf. & Inst. Code, § 827.9(j).)

- Additionally, law enforcement may disclose information to the public regarding certain minors taken into custody or alleged to have committed certain offenses if certain conditions are met. (Welf. & Inst. Code, §§ 827.5, 827.6.)

- Law enforcement also has authority to release certain information to other law enforcement agencies and school personnel under certain conditions. (Welf. & Inst. Code, §§ 827.5, 828, 828.1.)

D. RELEASE OF INFORMATION OR COPIES THROUGH COURT ORDER

- As described in **Section III.B.**, the juvenile court has the authority to authorize access to a juvenile case file upon petition. A court order is necessary when:

1. Individuals and agencies not specifically authorized to *inspect* a juvenile case file wish to obtain access or
2. Individuals and agencies allowed to *inspect but not receive copies* of a juvenile case file wish to obtain copies.

(Welf. & Inst. Code, § 827(a)(1)(Q); Cal. Rules of Court, rule 5.552(b).)

- The process for obtaining a court order is set out in court rules. (Cal. Rules of Court, rule 5.552(b)–(d).)

- The procedure and standard for accessing sealed records is different as is the procedure and standard for obtaining a court order if the petitioner wishes to obtain records in a juvenile case file that are protected by additional confidentiality or privilege laws. (Compare Cal. Rules of Court, rule 5.552(d) with Welf. & Inst. Code, § 827(a)(3)(A), (g).)

E. SEALED FILES

- Individuals have the opportunity to petition to have their juvenile case files sealed by the court in many circumstances. The county probation officer also may make such petition. (Welf. & Inst. Code, § 781.) In addition, the court *must* affirmatively order records sealed in some cases. (Welf. & Inst. Code, § 786.) Sealed records may include records held by law enforcement, probation, the court, and other agencies.

- Once the juvenile court seals a case file, it may not be inspected or otherwise accessed, except as outlined in the statute that authorized or required the sealing of the record. (Welf. & Inst. Code, § 827(g).)

- When records are sealed under sections 781 or 786, a very limited number of individuals and entities are still permitted to access, inspect and utilize the sealed records—but only for specified purposes, and there are limits on redisclosure or dissemination of the records accessed. (Welf. & Inst. Code, §§ 781, 786(g).)

- In both cases, the records cannot be accessed outside these statutory exceptions; for example, individuals who do not have authority to access the records under sections 781 or 786 cannot access the sealed records by filing a section 827 petition with the juvenile court. (*S.V. v. Superior Court* (2017) 13 Cal.App.5th 1174, 1182–1183.)

- There have been questions regarding whether a defendant has the right to review the sealed record of a third party for potentially exculpatory *Brady* evidence. (See **Section VI** for a discussion of *Brady*.) At least one court has held that a defendant does not have the right to request that the juvenile court examine a sealed record for exculpatory or other *Brady* evidence. (*See S.V. v. Superior Court* (2017) 13 Cal.App.5th 1174, 1182–1183.) If a record has been sealed under section 786 and a prosecuting attorney believes that access to the record is necessary in order to meet a statutory or constitutional obligation to disclose exculpatory information, the prosecuting attorney must submit a request to the juvenile court to access the record for this purpose.

(Welf. & Inst. Code, § 786(g)(1)(K).) Section 781 does not include a similar exception, however.

V. APPLICATION: HANDLING INFORMATION WITHIN A JUVENILE FILE THAT IS PROTECTED BY ADDITIONAL CONFIDENTIALITY AND PRIVILEGE LAWS

Several federal and state statutes protect the confidentiality and privilege of sensitive information often found in agency files. Information that may be protected by other laws includes but is not limited to:

- Education
- Gender identity and expression
- Health
- Mental health
- Sexual and reproductive health
- Sexual orientation
- Substance use treatment, and
- Child abuse reports.

Child welfare, probation and the juvenile court must honor any applicable federal and state confidentiality and privilege laws that apply to information housed in the case file, in addition to following any laws that protect the confidentiality of the child welfare file generally. (*See* Welf. & Inst. Code, § 827(a)(3)(A); Cal. Rules of Court, rule 5.552(f).)

If any information in the child welfare file is protected by additional confidentiality and privilege laws, the child welfare agency only may release those parts, absent a court order, to any individual or agency that is both (1) described in section 827 as authorized to inspect or receive copies of information in the child welfare file and (2) "entitled to access [the information] under the other state law or federal law or regulation without a court order." (Welf. & Inst. Code, § 827(a)(3)(A); *see* Cal. Rules of Court, rule 5.552(g): "Under no circumstances must this rule or any section of it be interpreted to permit access to or release of records protected under any other federal or state law … except as provided in those statutes … .")

If an individual or agency does not meet the latter requirement, the placing agency must redact the protected information or otherwise ensure that the protected information is not released when providing inspection or copies to the recipient. The individual or agency receiving the file must obtain a court order if the individual or agency wishes to inspect or receive copies of the protected information. (Welf. & Inst. Code, § 827(a)(3)(A).)

If an individual or agency does not meet the former requirement—that is, is not described in section 827 as authorized to inspect or receive copies of information in a child welfare file—nothing precludes that individual or agency from seeking the information from the original source if that individual or agency is entitled to the information from the original source.

Otherwise, the individual or agency must seek a court order to inspect or receive copies of the file, including any protected information within the file. (Welf. & Inst. Code, § 827(a)(1)(P).)

Appendix B includes examples highlighting how the rule in subdivision (a)(3)(A) of section 827 may apply in practice.

VI. SPECIAL CONSIDERATIONS AND LIMITATIONS REGARDING DISCLOSURE OF AGENCY FILES SUBJECT TO SECTION 827

Some special limits and considerations are present when disclosing information subject to section 827 of the Welfare and Institutions Code. This section of the brief highlights four issues that frequently raise questions: limits on redisclosure, access to records regarding deceased children, access by federal immigration officials, and constitutional considerations when information will be used in criminal proceedings.

A. LIMITS ON RE-DISCLOSURE

Section 827 states that the recipients of information under section 827 generally cannot make an independent decision to further disseminate the information to others.

- "A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to [section 827]. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court." (Welf. & Inst. Code, § 827(a)(4).)

- This has been interpreted to prohibit further dissemination by individual recipients as well as agency recipients. (*In re Tiffany G.* (1994) 29 Cal.App.4th 443, 450–452 [35 Cal.Rptr.2d 8, 9–12] (order prohibiting mother and stepfather from disseminating confidential documents generated during dependency proceedings, even to agencies or individuals listed in section 827 as authorized to receive the information, was not invalid).)

- Courts have interpreted this section to mean that the juvenile court may recognize and authorize limited further dissemination of records by a recipient, but the recipient is prohibited from making an independent decision to disclose the records. As explained by one appellate court:

> [S]ection 827 does not prohibit any disclosure that may result in further dissemination of the juvenile court records. For example, in cases where juvenile court records are disclosed for use in other court proceedings, there will be some dissemination. [¶] Instead, the prohibition against dissemination recognizes the exclusive authority of the juvenile court to determine who may have access to juvenile court records. This provision prohibits one who receives access to juvenile court records from independently making a decision to disclose such records to others not authorized by the statute or court order. It is the juvenile court, not the recipient, that has the authority to decide to whom juvenile court records may be released.

(*In re Keisha T.* (1985) 38 Cal.App.4th 220, 234 [44 Cal.Rptr.2d 822, 830].)

- Questions remain about how broadly this redisclosure limitation applies and how it applies in certain contexts—for example, the limits on redisclosure it places on foster caregivers who obtain the health and education passport of children in their care and want to use or redisclose the information, or on former foster youth who obtain their own file and want to use the information for different purposes, such as college enrollment, financial aid applications or immigration.

B. ACCESS TO RECORDS OF A DECEASED CHILD

Several California laws allow access to discrete information in the child welfare file about child fatalities or allow access for specific individuals. For example, notwithstanding section 827, "the name, date of birth, and date of death of a child shall be subject to disclosure by the county child welfare agency pursuant to [the Public Records Act]." (Gov. Code, § 6252.6.). In addition, state law allows a county board of supervisors to receive and review records in the custody of a child welfare agency or juvenile court "relating to a child who has died and who had previously come to the attention of, or was under the supervision of, the county child welfare agency." The board may receive and review the information only in closed session and is bound by all state and federal confidentiality laws. (Welf. & Inst. Code, § 16502.5.)

Others may access records on a deceased child through one of two avenues. Section 826.7 says:

> Juvenile case files that pertain to a child who died as the result of abuse or neglect shall be released by the custodian of records of the county welfare department or agency to the public pursuant to Section 10850.4 or an order issued pursuant to paragraph (2) of subdivision (a) of Section 827. ... Juvenile case file records that are not subject to disclosure pursuant to [section 10850.4] shall only be disclosed upon an order by the juvenile court pursuant to section 827.

(Welf. & Inst. Code, § 826.7.)

Each avenue involves a different process that includes not only different standards for disclosure but different redaction requirements.

C. ACCESS BY FEDERAL IMMIGRATION OFFICIALS

- The California Legislature, in 2015, clarified its intent that juvenile case files remain confidential regardless of the juvenile's immigration status. (Welf. & Inst. Code, § 831(a).)

- Information from a juvenile case file cannot be disclosed to federal immigration officials absent the filing of a petition and the issuance of an order from a juvenile court pursuant to section 827. (Welf. & Inst. Code, § 831(b).)

- Federal officials cannot disseminate information received from a juvenile case file unless a juvenile court has authorized that dissemination upon filing of a section 827 petition. They also cannot attach any juvenile information to other documents without approval of the presiding judge of the juvenile court. (Welf. & Inst. Code, § 831(c), (d).)

- "Juvenile information" for purposes of this statute "includes the 'juvenile case file,' as defined in subdivision (e) of Section 827, and information related to the juvenile, including, but not limited to, name, date or place of birth, and the immigration status of the juvenile that is obtained or created independent of, or in connection with, juvenile court proceedings about the juvenile and maintained by any government agency, including, but not limited to, a court, probation office, child welfare agency, or law enforcement agency." (Welf. & Inst. Code, § 831(e).)

D. CONSTITUTIONAL ISSUES: USE OF RECORDS IN CRIMINAL PROCEEDINGS

Privacy protections apply when criminal defendants seek information from a juvenile case file. At the same time, special access rules apply when information in the file may be considered exculpatory in a criminal case.

- On the one hand, even if an individual or agency has a right to inspect information in a juvenile case file pursuant to section 827, the California Constitution limits that right in certain contexts.

In 2008, California voters enacted "Marsy's Law," a ballot proposition that amended the California Constitution. The California Constitution, article I, section 28(b) now guarantees to victims of crime the right "[t]o prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or

any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law" as well as the right "[t]o be reasonably protected from the defendant and persons acting on behalf of the defendant." (Cal. Const., art. I, § 28(b)(2), (4).)

For this purpose, "a 'victim' is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim." (Cal. Const., art. I, § 28(e).) Marsy's Law may be read to limit, for example, a parent defendant's right to certain information in a child welfare agency file.

- On the other hand, defendants, including parent defendants, may have a right to certain exculpatory information in a juvenile case file pursuant to the due process clause of the Fourteenth Amendment and confrontation clause of the Sixth Amendment to the U.S. Constitution. (*See Brady v. Maryland* (1963) 373 U.S. 83; *Davis v. Alaska* (1974) 45 U.S. 308; see also *Pennsylvania v. Ritchie* (1987) 480 U.S. 39.) This is sometimes referred to as *Brady* material.

- While the prosecution has the burden to disclose exculpatory *Brady* evidence to a defendant, the defense may file a section 827 petition with the juvenile court to request the court conduct an in camera inspection of a juvenile case file for *Brady* exculpatory and impeachment evidence: "In camera review under section 827 is a proper mechanism to resolve a defense *Brady* disclosure request involving information in a juvenile file." (*J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1338.) The defense is entitled to such in camera review "upon a showing there is a reasonable basis to believe exculpatory or impeachment evidence." (*Id.* at p. 1339.) However, the defense does not have the right to an in camera inspection of sealed records. (*See S.V. v. Superior Court* (2017) 13 Cal.App.5th 1174, 1182–1183. For discussion of sealed records, see **Section VI**.)

VII. CONCLUSION

Federal law requires California to develop a comprehensive plan for the sharing of medical, including mental health, and education information of children in foster care. Even though stakeholders need a clear understanding of the privacy protections required by law, it is also

important to understand that federal and state confidentiality and privilege laws allow child welfare agencies to share certain information in the child welfare agency file with others.

Some open questions do remain regarding section 827 of the Welfare and Institutions Code. Legislation, regulations, and/or rules of court may be needed to address some of the issues. Any clarifications need to balance the right to privacy with the court's and others' need to have information to make appropriate decisions regarding placement and services.

VIII. RESOURCES

- All County Information Notice No. I-05-15, *Sharing Information with Caregivers* (Jan. 15, 2014), *www.cdss.ca.gov/lettersnotices/entres/getinfo/acin/2014/I-05_14.pdf*.

- All County Letter No. 18-23, *The Child and Family Team Process Frequently Asked Questions* (June 1, 2018), *www.cdss.ca.gov/Portals/9/ACL/2018/18-23.pdf?ver=2018-06-01-160245-447*.

IX. APPENDIXES

APPENDIX A: WHO CAN INSPECT AND RECEIVE COPIES OF JUVENILE CASE FILES PURSUANT TO SECTION 827?

INDIVIDUALS AND ENTITIES AUTHORIZED TO *INSPECT AND RECEIVE COPIES* OF INFORMATION PURSUANT TO SECTION 827

- "Court personnel." (Welf. & Inst. Code, § 827(a)(1)(A) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).)

- "The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law." (Welf. & Inst. Code, § 827(a)(1)(B) & (a)(5).)

- "The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action." (Welf. & Inst. Code, § 827(a)(1)(F) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).)

- "The minor who is the subject of the proceeding." (Welf. & Inst. Code, § 827(a)(1)(C) & (a)(5).)

- "The minor's parents or guardian." (Welf. & Inst. Code, § 827(a)(1)(D) & (a)(5).) This does not include stepparents who do not have custody (*In re Tiffany G.* (1994) 29 Cal.App.4th 443 [35 Cal.Rptr.2d 8]) or de facto parents (*In re B.F.* (2010) 190 Cal.App.4th 811 [118 Cal.Rptr.3d 561]).

- "The attorneys for the parties … who are actively participating in criminal or juvenile proceedings involving the minor." A parent's attorney in a criminal matter has access, but only to those records made available to the district attorney. (*Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607 [242 Cal.Rptr. 877]; Welf. & Inst. Code, § 827(a)(1)(E) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).)

- "[J]udges, referees, and other hearing officers … who are actively participating in criminal or juvenile proceedings involving the minor." (Welf. & Inst. Code, § 827(a)(1)(E) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).)

- "[P]robation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor." (Welf. & Inst. Code, § 827(a)(1)(E) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).)

- "Members of the child protective agencies as defined in section 11165.9 of the Penal Code." (Welf. & Inst. Code, § 827(a)(1)(H) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).)

- "The State Department of Social Services, to carry out its duties … to oversee and monitor county child welfare agencies, children in foster care or receiving foster-care assistance, and out-of-state placements." (Welf. & Inst. Code, § 827(a)(1)(I) & (a)(5).)

- "Authorized staff who are employed by, or authorized staff of entities who are licensed by, the State Department of Social Services, as necessary to the performance of their duties related to resource family approval, and authorized staff who are employed by the State Department of Social Services as necessary to inspect, approve, or license, and monitor or investigate community care facilities or resource families, and to ensure that the

standards of care and services provided in those facilities are adequate and appropriate, and to ascertain compliance with the rules and regulations to which the facilities are subject." There are specific conditions on how and when this information can be used and to whom it can be made available. (Welf. & Inst. Code, § 827(a)(1)(J) & (a)(5).)

INDIVIDUALS AND AGENCIES WITH AUTHORITY ONLY TO *INSPECT* INFORMATION

- "The superintendent or designee of the school district where the minor is enrolled or attending school." (Welf. & Inst. Code, § 827(a)(1)(G) & (a)(5).)

- "Authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor." (Welf. & Inst. Code, § 827(a)(1)(J) & (a)(5).)

- "Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor." (Welf. & Inst. Code, § 827(a)(1)(K) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).) The access granted under this subdivision should be compared to the access granted under the statutes discussed in **Section II.A.** and in **Appendix C**, which permit the child welfare agency in

its discretion to release copies of information to specified types of multidisciplinary teams.

- "A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code." (Welf. & Inst. Code, § 827(a)(1)(L) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).) The access granted under this subdivision should be compared to the access granted under section 827.10 of the Welfare and Institutions Code, discussed in the brief, which permits the child welfare agency in its discretion to release copies of information in its file to designated family law and probate court participants.

- "A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case." (Welf. & Inst. Code, § 827(a)(1)(M) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).)

- "A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders." (Welf. & Inst. Code, § 827(a)(1)(N) & (a)(5).) This includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe. (Welf. & Inst. Code, § 827(f).)

- "Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members." (Welf. & Inst. Code, § 827(a)(1)(O) & (a)(5).)

- "The Department of Justice, to carry out its duties pursuant to Sections 290.008 and 290.08 of the Penal Code as the repository for sex offender registration and notification in California." (Welf. & Inst. Code, § 827(a)(1)(P) & (a)(5).)

- "A probation officer who is preparing a report pursuant to Section 1178 on behalf of a person who was in the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Justice and who has petitioned the Board of Juvenile Hearings for an honorable discharge." (Welf. & Inst. Code, § 827(a)(1)(R) & (a)(5).)

- Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition. (Welf. & Inst. Code, § 827(a)(1)(Q) & (a)(5).)

APPENDIX B: ADDITIONAL APPLICABLE CONFIDENTIALITY AND PRIVILEGE LAWS

Several federal and state statutes protect the confidentiality and privilege of certain sensitive information often found in an agency file, including health, mental health, substance abuse, and education information. When this information is held in agency file, these confidentiality and privilege laws may apply and control whether, when, how and to whom an agency can disclose the information. As a result, some agencies and individuals with a right to inspect or receive copies of agency files under Section 827 nevertheless may be restricted from accessing certain information in the file. Some of the federal and state statutes that may apply are described below. This list is for illustrative purposes only and is not by any means exhaustive. In some cases, the description includes an example of how the applicable confidentiality statute may apply to limit or allow release of information in a child welfare file.

THE PRIVACY RULE UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

(45 C.F.R. parts 160 and 164.) Protecting the confidentiality of and limiting disclosure and use of certain health and mental health information.

HIPAA protects the confidentiality of medical and mental health information held by "covered entities." Covered entities include health care providers who transmit health information in electronic form, health plans and health care clearinghouses. (45 C.F.R. § 160.103.) Generally only covered entities and the "business associates" of covered entities must comply with HIPAA's confidentiality provisions. Therefore, health information held in agency files is subject to HIPAA *only* if the agency qualifies as a covered entity or the agency received the protected information as the business associate of another covered entity pursuant to a business associate contract. **It is extremely unusual for a child welfare agency to qualify as a covered entity or to receive information about foster youth as a business associate of a covered entity.** Were it ever to occur, medical information in the child welfare file would be subject to HIPAA restrictions on disclosure. (For more on HIPAA, see *Sharing Information About Children in Foster Care: Health Care Information*.)

THE COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION ACT (CAAAPTR)

(42 U.S.C. § 290dd-2; 42 C.F.R. Part 2.) Protecting the confidentiality of and limiting disclosure and use of information about individuals in certain substance abuse treatment programs.

CAAAPTR restricts the disclosure and use of patient identifying information about individuals in many substance abuse treatment programs. Recipients of information from these agencies must comply with CAAAPTR regulations as well. In most all cases, the recipient of information is absolutely restricted from re-disclosing the information unless

there is a CAAAPTR-compliant authorization or court order in place. (42 C.F.R. § 2.32.) (For more on CAAAPTR, relevant California law, and restrictions on disclosure, see *Sharing Information About Children in Foster Care: Substance Abuse Treatment Information*.)

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

Example: Substance Use Disorder Records

A child welfare agency obtains substance abuse treatment information about a parent from a CAAAPTR provider, pursuant to a written authorization by the parent. The authorization allows the treatment program to release information about progress in treatment to the child welfare agency but does not address whether the agency may re-release this information to the court or other third parties. These records are placed in the agency file. The youth's attorney and the parent ask for copies of the file. Both the youth's attorney and the parent have a general right to inspect and receive copies of information in the youth's child welfare file pursuant to section 827; however, the agency cannot release the substance abuse treatment records within the file unless CAAAPTR would allow that release. Because a patient is entitled to review their own treatment records under CAAAPTR, the agency may allow the parent to inspect or receive copies of the treatment information in the agency file. On the other hand, CAAAPTR does not allow the youth or the youth's attorney to view the parent's treatment records absent either an authorization signed by the parent or a court order. Thus, the agency cannot provide that information to the minor's attorney and must redact it before sharing the file with the youth.

(20 U.S.C. § 1232g; 34 C.F.R. part 99.) Protecting the confidentiality of and limiting access to and disclosure of education records.

FERPA protects the confidentiality of education records held by certain educational agencies and institutions. Educational agencies subject to FERPA are generally only authorized to release education records to a third party recipient such as a child welfare agency when the recipient will not further disclose the information to any other party without the consent of the parent or eligible student. (34 C.F.R. § 99.33(a).) Educational agencies and institutions may release information to a third party recipient knowing that the recipient will make further disclosures of the information, however, if the further disclosures will be made only to parties who are authorized to receive educational information without prior consent under 34 Code of Federal Regulations part 99.31. (34 C.F.R. § 99.33(b).) Exceptions in FERPA allow a child welfare agency to release information to third party recipients to help address a youth's education needs in some circumstances. (For more on FERPA and its requirements, see *Sharing Information About Children in Foster Care: Education Information.)*

THE CALIFORNIA CONFIDENTIALITY OF MEDICAL INFORMATION ACT (CMIA)

(Civ. Code, § 56.05 et seq.) Protecting the confidentiality of and limiting disclosure and use of some health and mental health information.

CMIA protects the confidentiality of health and mental health information held by health care providers, health plans and health care contractors and limits their ability to disclose that information. (Civ. Code, § 56.10.) Once protected information is disclosed by a health care provider to a third party recipient such as a child welfare agency, CMIA limits and controls the recipient's ability to release that information *in some cases*, depending in part on how the agency obtained the information. (Civ. Code, § 56.13.)

For example, when a third party recipient obtains protected health information pursuant to a signed authorization, CMIA prohibits the third party recipient from further disclosing that information except in accordance with a new authorization or as required or permitted by other provisions of CMIA or by law. (Civ. Code, § 56.13.) By contrast, CMIA does not prohibit a third party recipient of health information from further disclosing that information if the recipient obtained the information pursuant to a court order. (*See* Civ. Code, § 56.13). There are other examples.

In many cases, an authorization to release information may be necessary to further disclose information protected by CMIA. When a youth consented or could have consented to the underlying health services, the youth must sign the authorization form, and in most cases, the youth's parent does not have an automatic right to review the information. (Civ. Code, § 56.11(c); Health & Saf. Code, §§ 123110(a), 123115(a).) Examples of services to which minors may or must consent under California law include pregnancy-related care and, for youth ages 12 and older, substance use treatment and, in many cases, outpatient mental health treatment.

Example: Pregnancy-related Information

The physician for a 15-year-old dependent shares information with a probation officer regarding the youth's pregnancy pursuant to a CMIA-compliant authorization signed by the youth. The probation officer places this information in the agency file.

The biological mother of this youth requests copies of the youth's file. The biological mother has a general right to inspect and receive copies of information in her child's agency file pursuant to section 827. However, the agency must comply with CMIA requirements regarding release of protected health information. CMIA does not allow release of the pregnancy information to the parent except in accordance with CMIA. No provision of CMIA allows a parent to access this information without first obtaining the authorization of the youth or going through other legal process, such as obtaining a court order requiring release of the information. Thus, the agency must redact this information before providing a copy of the case file to biological mother.

Thus, depending in part on how a child welfare agency obtains the health information in its file, health and mental health information in the child welfare file may be subject to CMIA restrictions on disclosure. (For more on CMIA, see *Sharing Information About Children in Foster Care: Health Care Information*.)

THE CALIFORNIA LANTERMAN-PETRIS-SHORT ACT (LPS)

(Welf. & Inst. Code, § 5328 et seq.) Protecting the confidentiality of and limiting disclosure and use of information resulting from provision of certain mental health services.

LPS protects the confidentiality of information and records that result from provision of certain types of mental health services, as described in section 5328 of the Welfare and Institutions Code. LPS limits how that information can be used and re-disclosed by a provider as well as by a third party recipient. For example, if a county social worker obtains health information protected by LPS pursuant to a court order, further disclosure of this information is governed by LPS. (Welf. & Inst. Code, §§ 5328, 5328.04.) Exceptions in LPS do allow for some disclosure. (Welf. & Inst. Code, § 5328(*l*); *see* Welf. & Inst. Code, § 18964.) (For more on LPS, see the Judicial Council Briefing *Sharing Mental Health Information for Children in Foster Care*.)

THE CALIFORNIA EVIDENCE CODE AND EVIDENTIARY PRIVILEGE

(Evid. Code, §§ 990 et seq. and 1010 et seq.) Limiting the disclosure and use of "confidential communications" as evidence in court proceedings.

Evidentiary privilege restricts the use and disclosure of "confidential communications" as evidence in court. "Confidential communications" include communications between a patient and a doctor or therapist made in a confidential setting. (Evid. Code, §§ 992, 994, 1012, 1014.)

Privileged communications cannot be disclosed in court testimony, court reports, or documents that may be attached to or submitted with a court report unless the patient has waived the privilege. (Evid. Code, §§ 990 et seq. and 1010 et seq.) In a section 600 case, a parent or guardian may waive privilege on behalf of their minor child. In dependency cases, a child 12 years old or older is presumed mature enough to waive privilege on their own behalf. Otherwise, privilege can only be waived by the child's attorney. Neither the court, the child welfare agency, a health care provider, nor a parent may waive privilege for a dependent child. (Welf. & Inst. Code, § 317(f).) Disclosure of confidential communications by a health care provider to a third party does not automatically waive privilege. For example, disclosures of privileged information in a child and family team meeting does not waive privilege. (Welf. & Inst. Code, § 832(i).) Thus, an agency file may contain information that is no longer protected by confidentiality law but remains protected by privilege. When asked to disclose privileged communications for a court proceeding, the holder of privilege, a person "authorized" by the holder, and the health care provider are all authorized, and in some cases required, to claim privilege on behalf of a patient. (Evid. Code, §§ 994, 995, 1014, 1015.) There are outstanding questions regarding how the agency should proceed in such cases and whether, for example, the agency has a duty to assert privilege or inform the privilege holder so that they can assert privilege.

There are some situations in which privilege never attaches to what would otherwise be confidential communications. (*See, e.g.*, Evid. Code, §§ 1017, 1024.) There also is case law establishing that information protected by privilege can sometimes be used, in a circumscribed way, as evidence in juvenile proceedings. There is extensive case law in this area that should be reviewed to understand the current state of the law and scope of privilege. (*See, e.g., In re Pedro M.* (2000) 81 Cal.App.4th 550; *In re Kristine W.* (2001) 94 Cal.App.4th 521; *In re Mark L.* (2001) 94 Cal.App.4th 573; and subsequent cases; *see also Karen P. v. Superior Court* (2011) 200 Cal.App.4th 908.)

Example: Privileged Mental Health Information

A social worker obtains detailed mental health information about a dependent child pursuant to exceptions in CMIA and LPS that allow release of protected mental health information to a social worker for care coordination purposes. (See Civ. Code, §§ 56.10(c), 56.103; Welf. & Inst. Code, § 5328.04.) These exceptions allow a therapist to disclose information to the social worker for care coordination purposes, but the disclosure does not waive evidentiary privilege as neither the therapist nor the social worker has authority to waive the child's privilege. The social worker places this information in the child welfare file. The social worker is asked to include this information in a report that will be submitted as evidence to the juvenile court. Since the information is still protected by evidentiary privilege, the information cannot be included without addressing evidentiary privilege.

THE CALIFORNIA EDUCATION CODE

(Ed. Code, § 49073 et seq.) Protecting the confidentiality of and limiting disclosure and use of pupil records.

The **California Education Code** requires that recipients of school records pursuant to parental consent be notified that "transmission of the information to others without the written consent of the parent is prohibited." (Ed. Code, § 49075.) (For more on FERPA and its requirements, see *Sharing Information About Children in Foster Care: Education Information*.)

THE CALIFORNIA PENAL CODE

(Pen. Code, § 11167.5.) Limiting disclosure of certain child abuse and investigation reports).

Section 11167.5 of the Penal Code makes certain child abuse reports and investigative reports confidential and strictly limits to whom they may be disclosed. (Pen. Code, § 11167.5). The child welfare agency must abide by Penal Code section 11167.5 restrictions on disclosure even where an individual or entity otherwise has a right to inspect or obtain copies of records under Section 827. (*See* Welf. & Inst. Code, § 827(A)(3)(a); Cal. Rules of Court, rule 5.552(h).)

CALIFORNIA CONSTITUTION

(Cal. Const., art. I, § 1.) Protecting right to informational privacy.

Article I, section 1 of the California Constitution provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (Cal. Const., art. I, § 1.) The right to privacy includes a right to both informational and autonomy privacy. This right is self-executing, meaning "that the constitutional provision, in itself, creates a legal and enforceable right of privacy for every Californian." (*White v. Davis* (1975) 13 Cal.3d 757, 774.) Disclosures of information can violate this right to privacy if the youth had a reasonable expectation of privacy. There is extensive case law in this area that should be reviewed to understand the scope of the right.

APPENDIX C: ADDITIONAL INFORMATION ABOUT DISCLOSURES TO MULTIDISCIPLINARY TEAMS, INCLUDING CHILD AND FAMILY TEAMS

Placing agencies are required to use child and family teams, a form of multidisciplinary team, to help develop case plans. In addition, many counties have established multidisciplinary teams or have ongoing meetings that are multidisciplinary in scope, to facilitate coordination, service delivery and planning.

There are often questions about how much information an agency can provide to these groups without a court order. Several California statutes authorize an agency to disclose information to team members from a juvenile case file in specific multidisciplinary contexts.

To the extent that a county team or meeting panel satisfies the pertinent statutory definition of a multidisciplinary team, agencies may provide information to team members as prescribed under the applicable statute. This appendix gives examples of multidisciplinary teams, including the child and family team, permitted to receive information from agencies and the statutes that authorize the disclosure. This list is not exhaustive. (All section numbers refer to the Welfare and Institutions Code unless stated otherwise).

CHILD AND FAMILY TEAMS

- Section 16501 of the Welfare and Institutions Code requires child welfare and probation to engage and consider the recommendations of "child and family teams" as part of child welfare service provision. (Welf. & Inst. Code, §§ 16501(a), 706.5, 706.6.) "Child and family team" for this purpose is defined as "a group of individuals who are convened by the placing agency and who are engaged through a variety of team-based processes to identify the strengths and needs of the child or youth and his or her family, and to help achieve positive outcomes for safety, permanency, and well-being." (Welf. & Inst. Code, § 16501(a).)

- Section 832 of the Welfare and Institutions Code addresses sharing of information and records among members of a 16501 "child and family team."

- Section 832 requires the child and family team to obtain the appropriate authorizations to release information to team members. Authorization forms must comply with any applicable law. (Welf. & Inst. Code, § 832(b)(2).) For example, to release information protected by the Confidentiality of Medical Information Act (CMIA), an authorization must comply with the requirements of that act. (See Civ. Code, § 56 et seq.).

- Once such authorizations are in place, "relevant information and records may be shared with members of the team." However, if the team determines that the disclosure of information would present a reasonable risk of a

significant adverse or detrimental effect on the child's or youth's psychological or physical safety, the information shall not be released. (Welf. & Inst. Code, § 832(c).)

- Child welfare agencies are allowed to share information from a juvenile case file subject to section 827 with other team members, though must comply with applicable laws that may restrict release of certain information: "If the child welfare agency files or records, or any portions thereof, are privileged or confidential, pursuant to any other state law, except Section 827, or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the child welfare agency files or records, or any portions thereof, shall prevail." (Welf. & Inst. Code, § 832(e).)

- Information exchanged among CFT members shall be received in confidence for the limited purpose of providing necessary services and support to the child or youth and family. (Welf. & Inst. Code, § 832(a)(2).)

- Information shared with members of a CFT is subject to confidentiality and re-disclosure limitations:

  - "Information and records communicated or provided to the team, by all providers, programs, and agencies, as well as information and records created by the team in the course of serving its children, youth, and their families, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law. Nothing in this section shall be construed to affect the authority of a health care provider to disclose medical information pursuant to paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code." (Welf. & Inst. Code, § 832(d).)
  - "All discussions during team meetings are confidential unless disclosure is required by law. Notwithstanding any other law, testimony concerning any team meeting discussion is not admissible in any criminal or civil proceeding." (Welf. & Inst. Code, § 832(a), (f).)
  - "Disclosure of otherwise privileged information to team members shall not be construed to waive the privilege." (Welf. & Inst. Code, § 832(g).)

- By July 1, 2021, the Department of Social Services must issue written instructions to counties that describe all protections provided by statute for the confidentiality of mental health, reproductive and sexual health, and minor drug treatment information concerning minors and nonminor dependents for whom a child and family team meeting is held, including, but not limited to, the duties of therapists not to disclose confidential information, as described in Sections 123115 and 123116 of the Health and Safety Code and Section 1015 of the Evidence Code.

- If the county has produced a summary report or action plan of the CFT for use by team members, a copy of that report with any necessary redactions necessary to address confidentiality and privilege may be attached to the court report. (Welf. & Inst. Code, §§ 358.2, 366.2.)

CHILDREN'S MULTIDISCIPLINARY TEAMS

- Section 827(a)(1)(K) authorizes "members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor" to **inspect, but not receive copies of,** information in a child welfare file. (Welf. & Inst. Code, § 827(a)(1)(K) & (a)(5).)

- If parts of the child welfare file are protected by other confidentiality and privilege laws, the child welfare agency may allow inspection of those parts, absent a court order, if the team or team member is "entitled to access [the information] under the other state law or federal law or regulation without a court order." (Welf. & Inst. Code, § 827(a)(3)(A); see Cal. Rules of Court, rule 5.552(h).)

- Section 827 does not define "multidisciplinary team" for this purpose, nor does it prescribe any requirements for member qualifications, how many individuals or agencies constitute a team, or how to establish a team.

SECTION 830 AND "18951" CHILDREN'S MULTIDISCIPLINARY PERSONNEL TEAMS (18951 MDTS)

- Section 827(a)(1)(K) authorizes "members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor" to **inspect, but not receive copies of,** information in a child welfare file. (Welf. & Inst. Code, § 827(a)(1)(K) & (a)(5).)

- Section 830 authorizes a child welfare agency and its employees to disclose and exchange information and writings from the child welfare agency's file with members of an *18951 multidisciplinary personnel team* (or 18951 MDT, for short) engaged in the prevention, identification, management or treatment of child abuse or neglect, as long as the child welfare agency reasonably believes the information is generally relevant to the prevention, identification, management, or treatment of child abuse, or to the provision of child welfare services. (Welf. & Inst. Code, § 830(a); *see also* Welf. & Inst. Code, § 18951.) An 18951 MDT is named for the state code section that established it. (Welf. & Inst. Code, § 18951.)

- An 18951 MDT is "any team of **three or more people** who are trained in the prevention, identification, management, or treatment of child abuse or neglect cases and who are qualified to provide a broad range of services

related to child abuse or neglect." This may include certain mental health, medical, and education professionals, social workers with training in child abuse prevention, identification management or treatment, and law enforcement agents, as well as teachers and CalWORKS case managers whose responsibility is cross program case management, among others. (Welf. & Inst. Code, § 18951(d), emphasis added.)

- The 18951 MDT may deem individuals to be part of the team for a particular case "as necessary for the purpose of the prevention, identification, management or treatment of an abused child and his or her parents" as long as that individual is a person who is trained and qualified to serve on a 18951 MDT. The team must specify in writing its reasons for deeming that person to be part of the team. Once made part of the team, the person may receive information relevant to a particular case as though he or she were a member of the team. (Welf. & Inst. Code, § 18954(a).)

- Members of the 18951 MDT may share information "designated as *confidential* under *state* law" with other members of the team. (Welf. & Inst. Code, § 830, emphasis added.)

- Exceptions in some state confidentiality laws also allow for disclosure of information to an 18951 MDT. For example, Welfare and Institutions Code section 10850 protects the confidentiality of some information in the child welfare file but allows a child welfare agency to disclose and exchange this information with members of an 18951 MDT engaged in the prevention, identification, management, or treatment of child abuse or neglect, because the team activities are "activities performed in the administration of public social services." (Welf. & Inst. Code, § 10850.1.) Similarly, LPS allows protected mental health information and records to be disclosed between persons who are trained and qualified to serve on 18951 MDTs. However, there are restrictions on further dissemination of information subject to LPS. (Welf. & Inst. Code, § 5328(*l*); *see* Welf. & Inst. Code, § 18964.)

- Although federal HIPAA, CAAAPTR, and FERPA regulations do not directly authorize disclosures to multidisciplinary teams, such information may be shared where the disclosure complies with the applicable statute. (*See* Welf. & Inst. Code, § 827(a)(3).) For example, CAAAPTR allows disclosure of protected information related to substance abuse treatment on showing of a signed authorization. A child welfare agency may disclose CAAAPTR-protected substance abuse treatment information to members of a multidisciplinary personnel team if the agency has an authorization allowing that disclosure.

- "All discussions relative to the disclosure or exchange of any such information or writings during team meetings are confidential unless disclosure is required by law." (Welf. & Inst. Code, §§ 830(a), 10850.1(a).)

- "Notwithstanding any other provision of law, testimony concerning any such discussion is not admissible in any criminal, civil, or juvenile court proceeding." (Welf. & Inst. Code, § 830(a).)

- "Child welfare services," "multidisciplinary personnel team" and "child abuse" are specifically defined for these purposes by statute. (Welf. & Inst. Code, §§ 830(b), 10850.1(b), 18951.) Also note that an *18951 multidisciplinary personnel team* is different from an *18961.7 multidisciplinary team*, as explained in the next section.

- Neither section 18951 nor section 830 of the Welfare and Institutions Code prescribes how an 18951 MDT shall be created.

SECTION 18961.7 CHILDREN'S MULTIDISCIPLINARY TEAMS (18961.7 MDTS)

- Section 827(a)(1)(K) authorizes "members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor" to inspect, but not receive copies of, information in a child welfare file. (Welf. & Inst. Code, § 827(a)(1)(K) & (a)(5).)

- An 18961.7 MDT, named for the guiding code section, serves a specific purpose. As described in the statute, "[a] county may establish a child abuse multidisciplinary personnel team within that county to allow provider agencies to share confidential information in order for provider agencies to investigate reports of suspected child abuse or neglect made pursuant to Section 11160, 11166, or 11166.05 of the Penal Code, or for the purpose of child welfare agencies making a detention determination." (Welf. & Inst. Code, § 18961.7(a).)

- In order to establish an 18961.7 MDT, the county must develop certain governing protocols: "The sharing of information permitted under [section 18961.7(c)] shall be governed by protocols developed in each county describing how and what information may be shared by the child abuse multidisciplinary team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law. A copy of the protocols shall be distributed to each participating agency and to persons in those agencies who participate in the child abuse multidisciplinary team." (Welf. & Inst. Code, § 18961.7(e).)

- Once protocols are developed, 18961.7 MDTs may be created. An 18961.7 MDT is "any team of **two or more persons** who are trained in the prevention,

identification, or treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse." This may include certain mental health and medical professionals, specified education professionals, teachers, child welfare workers, and law enforcement, among others, as well as certain designates for particular cases. (Welf. & Inst. Code, § 18961.7(b)(1), emphasis added.)

- The statute authorizes members of the MDT to disclose and exchange "information and writings that relate to any incident of child abuse … if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse" (Welf. & Inst. Code, § 18961.7(c)(1)), with the following restrictions:

  - Information can be exchanged with and within an 18961.7 MDT only during the 30-day period following a report of suspected child abuse or neglect, or longer if documented good cause exists. (Welf. & Inst. Code, § 18961.7(c)(1).)
  - Information can be disclosed and exchanged between members of the 18961.7 MDT *only* if the team member in possession of such information or writing reasonably believes it to be generally relevant to the prevention, identification, or treatment of child abuse. (Welf. & Inst. Code, § 18961.7(c)(1).)
  - The statute "shall not be construed to restrict guarantees of confidentiality provided under state or federal law." (Welf. & Inst. Code, § 18961.7(g).)
  - A number of protections restrict 18961.7 MDT members from further disclosing information and obligate the team to safeguard the information shared and created by the team. (Welf. & Inst. Code, § 18961.7(f)–(h).)
  - The team must operate pursuant to the protocols developed. (Welf. & Inst. Code, § 18961.7(e).)

- It is unclear whether a child welfare agency may share information protected by other state confidentiality laws with an 18961.7 MDT absent a specific exception in the pertinent law. Section 18961.7(c)(1) says, "Notwithstanding … any other provision of law, … members of a child abuse multidisciplinary personnel team … may disclose to and exchange with one another information and writings that relate to any incident of child abuse that may also be designated as confidential under state law … ." However, section 18961.7(g) says, "This section shall not be construed to restrict guarantees of confidentiality provided under state or federal law." Further guidance would be helpful.

- Although federal HIPAA, CAAAPTR, and FERPA regulations do not directly authorize disclosures to multidisciplinary teams, such information sharing may occur when a disclosure complies with the applicable statute. (*See* Welf. & Inst. Code, § 827(a)(3)). For example, CAAAPTR allows disclosure of protected substance abuse treatment information with a signed

authorization. A child welfare agency may disclose substance abuse treatment information protected by CAAAPTR to members of a multidisciplinary personnel team if the agency has an authorization allowing that disclosure.

- The information and records communicated or provided to team members, as well as information and records created, "shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. Existing civil and criminal penalties shall apply to the inappropriate disclosure of information held by the team members." (Welf. & Inst. Code, § 18961.7(h).)

SECTION 13753 OF THE PENAL CODE HUMAN TRAFFICKING MULTIDISCIPLINARY PERSONNEL TEAMS

- Section 13753 authorizes child welfare agency social workers to "disclose … and exchange with [other members of the 13753 MDT] information and writings that relate to any incident of human trafficking that may also be designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of human trafficking" following a report of suspected human trafficking. (Pen. Code, § 13753(b)(9), (c).)

- A 13753 MDT is a "multidisciplinary personnel team consisting of two or more persons who are trained in the prevention, identification, management, or treatment of human trafficking cases and who are qualified to provide a broad range of services related to human trafficking" created by a city, county, city and county, or community-based nonprofit organization. (Pen. Code, § 13753(a).) This may include law enforcement, medical personnel, mental health providers, district attorneys, victim-witness program personnel, sexual assault and domestic violence counselors, civil legal service providers, human trafficking caseworkers, child welfare agency social workers and social service agency staff, among others. (Pen. Code, § 13753(a).)

- Protocols must be developed in each county that describe "how and what information may be shared by the human trafficking multidisciplinary team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law." Each participating agency and persons participating on the MDT must receive a copy of the protocols. (Pen. Code, § 13753(e)(1).)

- Before disclosing information, team members must obtain consent. "Members of the team that have confidential information obtained from an individual shall not disclose that information to and with one another unless the member has obtained that individual's informed, written, reasonably time-limited consent to the disclosure, in accordance with all applicable state

and federal confidentiality laws, or it is otherwise required by other state or federal law or by court order. Before such consent is obtained, a member of the team is required to inform the individual that the information may be shared with law enforcement professionals or other entities without that individual's consent if required by law." (Pen. Code, § 13753(e)(2).)

- The disclosure and exchange of information may occur telephonically or electronically if there is adequate verification of the identity of the team members participating. (Pen. Code, § 13753(c)(2).)

- There are a number of confidentiality and redisclosure limitations placed on information shared with team members, including the following:

  - Disclosure and exchange of information shall not be made to anyone other than members of the human trafficking multidisciplinary personnel team and those qualified to receive information as set forth in the statute. (Pen. Code, § 13753(c)(3).)
  - Every member of the human trafficking multidisciplinary personnel team who receives information or records regarding children or families in his or her capacity as a member of the team shall be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights. (Pen. Code, § 13753(f).)
  - Information and records communicated or provided to the team members by providers and agencies, as well as information and records created in the course of a domestic violence investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by applicable statutory and common law protections, except where disclosure is required by law. Existing civil and criminal penalties shall apply to the inappropriate disclosure of information held by the team members." (Pen. Code, § 13753(h).)
  - A disclosure of information consented to by an individual shall not be deemed a waiver of any privilege or confidentiality provision, including those contained in Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code and in Chapter 4 of Division 8 of the Evidence Code. (Pen. Code, § 13753(e)(3).)

SECTION 13752 OF THE PENAL CODE DOMESTIC VIOLENCE MULTIDISCIPLINARY PERSONNEL TEAMS

- Section 13752 authorizes child welfare agency social workers to "disclose … and exchange with [other members of the 13753 MDT] information and writings that relate to any incident of domestic violence that may also be designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the

prevention, identification, or treatment of domestic violence" following a report of suspected domestic violence. (Pen. Code, § 13752(b)(9), (c).)

- A 13752 MDT is a "multidisciplinary personnel team consisting of two or more persons who are trained in the prevention, identification, management, or treatment of human trafficking cases and who are qualified to provide a broad range of services related to domestic violence" created by a city, county, city and county, or community-based nonprofit organization. (Pen. Code, § 13752(a).) This may include law enforcement, medical personnel, mental health providers, district attorneys, victim-witness program personnel, sexual assault and domestic violence counselors, civil legal service providers, human trafficking caseworkers, child welfare agency social workers and social service agency staff, among others. (Pen. Code, § 13752(a).)

- Protocols must be developed in each county that describe "how and what information may be shared by the domestic violence multidisciplinary team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law." Each participating agency and persons participating on the MDT must receive a copy of the protocols. (Pen. Code, § 13752(e)(1).)

- Before disclosing information, team members must obtain consent. "Members of the team that have confidential information obtained from an individual shall not disclose that information to and with one another unless the member has obtained that individual's informed, written, reasonably time-limited consent to the disclosure, in accordance with all applicable state and federal confidentiality laws, or it is otherwise required by other state or federal law or by court order. Before such consent is obtained, a member of the team is required to inform the individual that the information may be shared with law enforcement professionals or other entities without that individual's consent if required by law." (Pen. Code, § 13752(e)(2).)

- The disclosure and exchange of information may occur telephonically or electronically if there is adequate verification of the identity of the team members participating. (Pen. Code, § 13752(c)(2).)

- There are a number of confidentiality and redisclosure limitations placed on information shared with team members, including the following:

  - Disclosure and exchange of information shall not be made to anyone other than members of the domestic violence multidisciplinary personnel team and those qualified to receive information as set forth in the statute. (Pen. Code, § 13752(c)(3).)
  - Every member of the domestic violence multidisciplinary personnel team who receives information or records regarding children or families in his or her

capacity as a member of the team shall be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights. (Pen. Code, § 13752(f).)

- Information and records communicated or provided to the team members by providers and agencies, as well as information and records created in the course of a domestic violence investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by applicable statutory and common law protections, except where disclosure is required by law. Existing civil and criminal penalties shall apply to the inappropriate disclosure of information held by the team members. (Pen. Code, § 13752(h).)
- A disclosure of information consented to by an individual shall not be deemed a waiver of any privilege or confidentiality provision, including those contained in Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code and in Chapter 4 of Division 8 of the Evidence Code. (Pen. Code, § 13753(e)(3).)