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Child Welfare: Lance's Law: Expanding Who May Look at Child Abuse Reports

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Code Sections Affected

Penal Code §§ 11165.12; 11166.9; 11167.5; 11169; 11170; 11170.5 (amended).

SB 644 (Polanco); 1997 STAT. Ch. 842

AB 1065 (Goldsmith); 1997 STAT. Ch. 844

AB 1536 (Wright); 1997 STAT. Ch. 24

I. INTRODUCTION

Lance Helms was beaten to death by his father's girlfriend when he was two and a half years old.¹ Almost immediately after Lance was born in 1992, he was taken away from his parents, who had a long history of drug abuse,² and was placed with his aunt.³ He spent almost two years with her, and she sought to adopt him.⁴ However, before the formal proceedings were completed, the Los Angeles County dependancy court stepped in and reunited Lance with his father.⁵ Immediately after Lance went to live with his father, his grandmother and aunt noticed Lance had a number of bruises on his body when he came to visit them.⁶ They were so concerned that they reported the suspected abuse to the county social agency.⁷ Although a social worker visited Lance, the worker could do nothing.⁸ Three weeks later Lance was dead.⁹

1. See Mark Gladstone, *Child Abuse Victim's Legacy is Tide of Bills Legislature: Lawmakers Try to Make it Easier to Remove Children from Abusive Homes. But Some Caution that Family Sanctity Demands Limited Interference.*, L.A. TIMES, June 11, 1996, at A3 (describing how the tragic death of Lance Helms has spurred the California Legislature into action).

2. See James Rainey, *A Child Dies, and Legal System is Blamed Violence: Social Workers and Family Members Say Courts Ignored Numerous Red Flags in Assigning Custody of Boy*, L.A. TIMES, Apr. 28, 1995, at A1 (reporting that Lance Helms was born to heroin addicted parents).

3. See Rainey, *supra* note 2, at A1.

4. *Id.*

5. See CAL. WELF. & INST. CODE § 16507 (West 1991 & Supp. 1998) (stating that family reunification services shall be provided when a child is taken out of the home due to abuse or neglect).

6. See Rainey, *supra* note 2, at A1 (reporting that Lance had a black eye the first time Lance's aunt went to visit him after his father was given custody).

7. *Id.*

8. See *48 Hours* (CBS television broadcast, Feb. 29, 1996) (detailing Lance's story and how the child protection agency or Los Angeles County's Child protection agency might have prevented his death).

9. See Rainey, *supra* note 2, at A1 (stating that Lance's father's live in girlfriend was charged with the murder of Lance).

Lance's death and the national attention it received spurred a legislative stampede of child welfare reform bills in the 1996 and 1997 Legislative Session.¹⁰ Most of the resulting legislation made it easier for states to remove children from their families.¹¹ For example, during the 1996 Legislative Session, SB 1812 was introduced by Senator Polanco which, if it had passed, would have expanded the list of agencies allowed access to the Department of Justice's child abuse registry.¹² SB 1812 would have given those responsible for removing children from their homes more efficient access to reports in the Child Abuse Central Index.¹³ Although SB 1812 failed passage,¹⁴ the move to expand access to the registry was taken up again in the 1997 Legislative Session.¹⁵

II. LANCE'S LAW: A RESPONSE TO LANCE HELMS' DEATH

Child abuse and neglect is an increasing problem in California.¹⁶ Drug epidemics, poverty, and the break-up of the nuclear family have contributed to the increase in child abuse.¹⁷ Stories like that of Lance Helms have increased public awareness of child abuse and placed pressure on the State to address child abuse issues.¹⁸

California responded to pressures over child abuse by creating mandatory reporting laws for civil employees, as well as creating a central index to house child abuse reports.¹⁹ Reporting suspected child abuse is mandatory for employees working in fields such as social welfare, healthcare, protective services, and education.²⁰ Once a report of child abuse is made, it is investigated by a child protective

10. See Gladstone, *supra* note 1, at A3 (listing the bills dealing with child welfare as a result of Lance Helms' death).

11. *Id.*

12. See Jonathan Kerr, *California: Legislature Tackles Flood of Child Abuse, Family Reunification*, WEST LEGAL NEWS, June 24, 1996, at A1 (listing child welfare reform bills which were introduced in the California Legislature during the 1996 Legislative session).

13. *Id.*

14. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 644, at 2 (July 15, 1997) (stating that AB 1812 failed passage in the 1996 Legislative Session because of legal concerns over the Child Abuse Central Index, but that those concerns had been cleared up by the time the bill was reintroduced as SB 644 in the 1997 Legislative Session).

15. *Id.*

16. See Lynn Smith, *Children's Aid System Gets Mixed Marks From Clients; Social Services: Parents and Youths Say Agency Does Help Them. But it's Often Impersonal and Slow-moving.*, L.A. TIMES, Feb. 27, 1996, at A1 (stating that child abuse has increased dramatically because of various social problems).

17. *Id.*

18. See *supra* notes 1-10 and accompanying text (detailing the story of Lance Helms).

19. See *Planned Parenthood v. Van de Kamp*, 181 Cal. App. 3d 245, 255, 226 Cal. Rptr. 361, 363 (1986) (stating that California's child abuse reporting laws were created to combat the victimization of children).

20. See CAL. PENAL CODE § 11166(a)-(e) (West 1992 & Supp. 1998) (explaining who must report suspected child abuse); *id.* § 11165.7(a) (West 1992 & Supp. 1998) (stating who is considered a child care custodian under California Penal Code § 11166); *id.* § 11166.2 (West 1992) (stating that persons required to report under California Penal Code § 11166 must immediately call child protective services); *id.* § 11166.5(a) (West 1992) (detailing the

agency, and the agency then decides if the report is unfounded or if it can be substantiated.²¹ If the agency determines that the report was not unfounded, then it forwards a copy of its report to the Department of Justice.²²

The Department of Justice retains an index of all reports of abuse made by the child protective agency.²³ These reports are kept in California's Child Abuse Central Index²⁴ which is maintained by the Department of Justice.²⁵ Reports are gathered by child protective agencies and sent on to the Department of Justice after the agency has investigated the allegations to determine their validity.²⁶ Subsequent access to the index is limited by statute to certain agencies and individuals who request such access.²⁷ The Department of Justice is responsible for handling requests for child abuse information contained in the index and sending out those reports when requested.²⁸ All states have faced increased reports of child abuse, and all have some form of statutory scheme which regulates who must report suspected child abuse, how reports are investigated, the maintenance of reports in a central index, and who may have subsequent access to the reports.²⁹

Chapters 842, 844, and 24, collectively labeled Lance's Law Child Safety Reform Act of 1997 [hereinafter Lance's Law],³⁰ affect child abuse reporting in two ways. First, Lance's Law expands the number of agencies that may receive child abuse reports to include placement agencies that wish to inquire about relatives who provide foster care as well as local child death review teams that investigate child deaths.³¹ Furthermore, Lance's Law allows the Board of Prison Terms to subpoena social workers testimony to validate child abuse reports filed with the child protective agency.³² Supporters of Lance's Law advocate expanding the list of

procedure for reporting child abuse).

21. See CAL. PENAL CODE § 11169 (West 1992 & Supp. 1998) (setting forth the procedure that a child protective agency must follow when submitting a report to the Department of Justice).

22. *Id.*

23. See *id.* § 11170(a)-(b) (West 1992 & Supp. 1998) (describing procedures for the Department of Justice to follow in retaining that report).

24. See 65 Ops. Cal. Att'y Gen. 335 (1982) (stating the Department of Justice will retain an index of all preliminary reports that the child protective agency makes, and that the index will not contain any unfounded reports).

25. *Id.*

26. *Id.*

27. See *id.* § 11170(b)(3)-(4) (West 1992 & Supp. 1998) (explaining who may receive child abuse reports from the index).

28. See CAL. PENAL CODE § 11170 (West 1992 & Supp. 1998) (directing the Department of Justice to maintain the Child Abuse Central Index).

29. See, e.g., Jill D. Moore, Comment, *Charting a Course Between Scylla and Charybdis: Child Abuse Registries and Procedural Due Process*, 73 N.C. L. REV. 2063, 2065 (1995) (stating that all states now have some form of statutory scheme for preventing child abuse, and that most states now have a central child abuse registry).

30. See Cal. Legis. Serv. ch. 842, sec. 1, at 4692 (West) (amending CAL. PENAL CODE §§ 11165.12, 11166.9, 11167.5, 11169, 11170, 11170.5) (declaring that Chapters 24, 842, and 844 should be know as Lance's Law Child Safety Reform Act of 1997).

31. See CAL. PENAL CODE § 11170 (amended by Chapter 844) (setting forth who may have access to the Child Abuse Central Index).

32. *Id.* § 11167.5 (amended by Chapter 842 and 844).

agencies receiving reports, arguing that these agencies need access to abuse reports in order to better protect children.³³

Chapter 842 also affects how the Department of Justice maintains reports within the Child Abuse Central (Index).³⁴ Lance's Law sets up a scheme in which people who are listed as abusers in the report can gain access to Index reports that concern them.³⁵ This allows those people who no longer should be in the database to take appropriate action and expunge that information from the Index.³⁶ Furthermore, the scheme allows data on victims who have reached an adult age to be expunged from the Index.³⁷ It also provides for mandatory purging of unfounded reports after a certain period of time.³⁸ This will increase the accuracy of the Index and provide greater due process protection to those who are listed in it.³⁹

III. LANCE'S LAW: EFFECTS ON CURRENT LAW

A. *Child Placement Agencies' Access to the Child Abuse Central Index*

When it is necessary to remove children from their homes and place them in foster care, California gives preferential treatment to relatives wishing to care for the child.⁴⁰ Children placed with relatives versus traditional foster care families make up almost half of all children placed in foster care.⁴¹ Relative foster care has become a popular way for the state to reduce the cost of operating the foster care system by shifting costs onto extended families.⁴² Relative foster care has a number of other benefits for the children over traditional foster care, such as: (1) maintaining the child's cultural environment; (2) smoothing the child's transition to foster care; and (3) keeping the child's social network of family and friends stable.⁴³

33. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1065, at 1-2 (May 21, 1997) (stating that the California Children's Lobby argues that protective agencies' inability to access the Child Abuse Central Index has resulted in the placement of children in abusive homes).

34. See *infra* notes 60-127 and accompanying text (explaining how Lance's Law affects child reporting laws in California).

35. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 644, at (July 15, 1997).

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1065, at 1 (Apr. 2, 1997) (explaining that California law prefers relatives over strangers when placing children in a foster home); see also CAL. WELF. & INST. CODE § 361.3(c)(2) (West Supp. 1998) (defining relative as a grandparent, aunt, uncle, or sibling); *id.* § 361.2(f)(1) (West Supp. 1998) (stating that children may be placed with relatives even outside the county, but if the child is placed in foster care he must be placed in the same county as the parent); *id.* § 361.2(a) (West Supp. 1998) (stating that relatives who wish to take care of the children will receive preferential treatment).

41. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1065, at 2 (July 8, 1997) (stating that 45% of children removed from their home are placed with relatives).

42. See Alvin A. Rosenfeld, *Foster Care: an Update*, 36 J.A.C.A. 448, 450 (Apr. 1, 1997) (stating that advocates of relative foster care believe it has significant advantages over traditional foster care).

43. *Id.* at 451.

However, it is important to note that relative foster care parents, unlike traditional foster parents in California, are not licensed by the state.⁴⁴ Therefore, the relative's fitness as a parent may be unknown to the child protective agency when the agency places the child in the relative's care.⁴⁵ Often, placement of a child must be done quickly and the protective agency does not have the resources to fully investigate the relative foster parents before placing the child in their care.⁴⁶ This means that the protective agency may unwittingly place children in unfit or abusive homes.⁴⁷

The child protective agencies have discretion to decide where to place the child, even when there is a relative who wants to care for the child.⁴⁸ In making this decision, the child protective agency weighs a number of factors in determining whether the relative foster parent will provide a suitable home for the child.⁴⁹ In helping the protective agency make this determination, the agencies typically relied on reports from the Child Abuse Central Index.⁵⁰ However, the Department of Justice, after a lawsuit was filed against them, discovered that there was no statutory authority enabling them to release information to placement agencies inquiring about relative foster care providers.⁵¹ The statute which sets forth the list of those qualified to receive reports from the Department of Justice only allows these agencies access to information about licensed foster care providers.⁵² Since child abuse reports are subject to confidentiality laws, the Department of Justice stopped providing abuse reports on relative foster care parents.⁵³ Without access to these reports, placement agencies are often forced to blindly place children with

44. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1065, at 2 (Apr. 2, 1997) (stating that relatives who are willing to provide foster care are typically unlicensed).

45. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1065, at 3 (July 8, 1997) (stating that because placement agencies cannot effectively evaluate relative foster care providers, this could have a detrimental effect on the welfare of the child).

46. *Id.*

47. *Id.*

48. See CAL. WELF. & INST. CODE § 361.3(a) (West Supp. 1998) (stating that when a relative wishes to care for the children they will be considered first, but the ultimate decision is in the hands of the placement agency).

49. See *id.* § 361.3 (West Supp. 1998) (explaining that when making their decision, the placement agency must consider the best interest of the child, the wishes of the parent, and the safety of the child).

50. See SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1065, at 2 (July 15, 1997) (describing how child placement agencies decide with whom they will place a child).

51. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1065, at 2 (July 8, 1997) (stating that the Department of Justice changed its procedure with regard to placement agency access to the Child Abuse Central Index in 1995).

52. See CAL. PENAL CODE § 11170(b)(1) (West 1992 & Supp. 1998) (stating that the Department of Justice may provide information from the Index to placement agencies only for licensed foster care providers, or those applying for a license to become a foster care provider).

53. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1065, at 2 (Apr. 2, 1997) (stating that in November of 1995, the Department of Justice stopped providing reports on relatives to placement agencies).

relatives.⁵⁴ This was a major concern of the Legislature in enacting Chapters 842, 844, and 24.⁵⁵

Chapters 842, 844, and 24 ensure that placement agencies are able to obtain information from the Child Abuse Central Index on any person that has agreed to care for the child in foster care placement. This includes access to any information on unlicensed relatives who wish to take a child.⁵⁶ There is a strong belief that unless placement agencies have this access, they may place a child in a dangerous situation.⁵⁷

Furthermore, Chapters 842, 844, and 24 provide that in emergency situations the Department of Justice need not verify the report with the original reporting agency before allowing access to child abuse reports by child placement agency requesting the report.⁵⁸ The Department of Justice implemented this procedure in order to ensure that the reporting agency still had the report on file because the Index system merely catalogs reports and does not maintain the full report.⁵⁹ However, in situations where the need to place a child is of immediate concern, this procedure has caused unwarranted delays.⁶⁰ For instance, if a placement agency needed to place a child on a weekend or holiday and the reporting agency was closed, the placement agency would have to wait several days before the report could be verified.⁶¹ Placement agencies typically do not have the resources to verify the safety of a placement home without the use of the Index.⁶² Therefore, the Legislature sought to reduce delays by allowing the Department of Justice to skip the verification procedure when sending reports to placement agencies needing emergency placement of a child.⁶³

54. *Id.* at 2.

55. *Id.* at 2.

56. CAL. PENAL CODE § 11170(b) (amended by Chapter 842).

57. See *supra* notes 41-42 and accompanying text.

58. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1065, at 2 (July 15, 1997); see CAL. CIV. CODE § 1798.8 (West 1997) (requiring all government records to be accurate, relevant, timely, and complete).

59. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1065, at 3 (July 15, 1997) (stating that the Department of Justice's Child Abuse Central Index merely catalogs reports and does not maintain a full copy of them).

60. See SENATE COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF SB 644, at 7 (Apr. 8, 1997) (describing situations where placing children in foster care has been delayed for several days).

61. *Id.*

62. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1065, at 1 (Sept. 9, 1997) (stating that local child placement agencies lack the tools to quickly evaluate the safety of relative placements).

63. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1065, at 2 (July 8, 1997) (explaining that the verification procedure delayed placement of abused children).

B. *Child Death Review Teams' Access to the Child Abuse Index*

Child death review teams have existed on the local level since 1978, when the first child death review team was created in Los Angeles.⁶⁴ Since that time, almost all states have created some form of child death review teams.⁶⁵ The purpose of these teams on a local level is to investigate child deaths.⁶⁶ In doing so, the teams coordinate the efforts of agencies responsible for criminal investigation, social services, health and welfare services, and medical examiners.⁶⁷ Prior to the creation of the child death review teams, law enforcement, health agencies, and child welfare agencies acted independently of each other, often filing reports containing duplicate information.⁶⁸ Working together to form a team of law enforcement, child welfare, and health agencies reduced redundant reporting and facilitated the sharing of information about the case.⁶⁹ This led to more accurate reporting as to the actual cause of death.⁷⁰ Once the team reviewed the case and made its determination as to the cause of death, it turned the case over to the appropriate agency to follow up on the case if needed.⁷¹ For example, if the team decides that a child died at the hands of a parent, the team will turn the case over to law enforcement officials with an appropriate recommendation.⁷² The recommendation of the child death review team to law enforcement officials would be to either pursue an investigation or close the case.⁷³

Child death review teams also exist on a state level.⁷⁴ Typically, the goal of statewide teams is to make statewide policy recommendations about child death prevention based upon review of a large number of cases by local review teams.⁷⁵ These statewide teams may also work to coordinate the efforts of local teams and

64. See Michael J. Durfee, *Origins and Clinical Relevance of Child Death Review Teams*, 267 JAMA 3172, 3173 (June 17, 1992) (discussing the purpose of child death review teams from their origins, and what all teams should set out to accomplish).

65. U.S. ADVISORY BOARD ON CHILD ABUSE AND NEGLECT, REPORT, A NATION'S SHAME: FATAL CHILD ABUSE AND NEGLECT IN THE UNITED STATES, at 1 (copy on file with *McGeorge Law Review*) [hereinafter ADVISORY, A NATION'S SHAME].

66. See Durfee, *supra* note 64, at 3173.

67. *Id.* at 3174.

68. *Id.*

69. See CAL. PENAL CODE § 11166.7 (West 1992) (listing who may be on the child death review team).

70. See Durfee, *supra* note 64, at 3173 (explaining that in states that have established child death review teams, the teams have been successful in reclassifying a number of deaths).

71. See ADVISORY, A NATION'S SHAME, *supra* note 65, at 5 (describing the procedure followed by a typical child death review team).

72. See Durfee, *supra* note 64, at 3175 (stating how child death review teams interact with other agencies investigating child deaths).

73. *Id.*

74. *Id.*

75. See ADVISORY, A NATION'S SHAME, *supra* note 65, at 4 (explaining the responsibilities of a statewide child death review team).

provide the protocol that local teams must follow in reviewing deaths.⁷⁶ In some states, these teams also investigate individual cases, especially where no local team exists.⁷⁷

In California, child death review teams have existed on the county level for almost 30 years.⁷⁸ Statewide coordination of child death review teams by the Attorney General, working with state child abuse officials, came only after a number of counties already had established teams.⁷⁹ Other states have taken a much more active role in the creation of local child death review teams, making detailed provisions for the agency representatives needed on the team, as well as the protocol the team must follow in reviewing a child's death.⁸⁰ For example, Arizona has created a statutory scheme that specifies which local agency officials are to be on the team, the scope of the team's duties, the local team's relationship to the statewide team, and the access that local teams have to confidential reports.⁸¹ Missouri goes even further with its scheme.⁸²

In Missouri a medical examiner or coroner must be the first to review all child deaths.⁸³ If they find the death has occurred under suspicious circumstances, they must turn the case over to the child death review team.⁸⁴ The team must fill out a standardized form on the child's death.⁸⁵ However, not all states have such elaborate statutory schemes for child death review teams. Colorado's statewide child death review team was created by state child protective agencies and health officials deciding to work together to review child deaths within the state.⁸⁶

76. See CAL. PENAL CODE § 11166.7(a)-(c) (West 1992 & Supp. 1998) (setting forth the state's protocol for child death review teams).

77. See ADVISORY, A NATION'S SHAME, *supra* note 65, at 4 (describing how Colorado's child death review team works).

78. See *supra* note 64 and accompanying text (detailing the history of child death review teams).

79. See Durfee, *supra* note 64, at 3175 (stating that local teams had spread to almost every county before California enacted a state team).

80. See *infra* notes 81-88 (discussing how Arizona and Missouri have handled the creation of local child death review teams).

81. See ARIZ. REV. STAT. ANN. § 36-3502(A)-(B) (West 1993) (stating that local teams must contain a county medical examiner, an official from the child protective service, and an official from the health department in order to receive state authorization to review child deaths); see also *id.* § 36-3502(C) (West 1993) (setting forth what authorized local child fatality teams must do); *id.* § 36-3502(A) (West 1993) (requiring local fatality teams to follow the protocol set by the state team); *id.* § 36-3503(A), (B), (D)-(F) (West 1993) (detailing the procedure for child fatality teams obtaining records regarding the deceased child they are investigating).

82. See *infra* note 83-85 and accompanying text (discussing Missouri's scheme for child death review).

83. See MO. ANN. STAT. § 58.452(1)-(2) (West Supp. 1998) (stating that the when a child dies, the coroner first must examine the child and then depending on the circumstances notify the chairman of the child fatality review panel or file a "non suspicious" death form).

84. *Id.*

85. See *id.* § 210.192(3) (West 1996) (requiring the local team to send a report on every death they review, as well as a summary report form, to the Department of Social Services, State Technical Assistance Team, and Department of Health).

86. ADVISORY, A NATION'S SHAME, *supra* note 65, at 4.

Where child death review teams have been established, they have had success in reclassifying a number of child deaths.⁸⁷ In a number of cases they have designated abuse as the cause of death, with the parents or guardians of the child being the perpetrator.⁸⁸ However, child death review teams have received some criticism by those who believe that in some cases the teams go overboard with investigations or are too quick to attribute the death to abuse and/or neglect in what may have been an accidental or disease related death.⁸⁹ Advocates of child death review teams argue that a high number of child deaths at the hands of parents or guardians are not reported as homicides.⁹⁰ This, they say, is because no one ever suspects that bereaving parents are capable of murdering their own children.⁹¹ Therefore, advocates argue that one of the easiest crimes to get away with is murdering one's own child.⁹²

Child death review teams complain that the confidentiality reports associated with child abuse reporting hinder their investigations.⁹³ Typically, state law does not expressly provide that child death review teams have access to child abuse reports.⁹⁴ In addition, the agency which houses the report may be confused about whether or not it is authorized to give child abuse reports to the teams.⁹⁵ Federal law, which provides for block grants to state child abuse and neglect programs, makes exceptions for child death review teams in the confidentiality requirements for state programs.⁹⁶ These exceptions allow child death review teams access to reports made by child welfare agencies to help the team review child deaths.⁹⁷ California law allows access to the Child Abuse Central Index to multi agency review teams

87. *Id.*

88. *Id.*

89. See Jody T. Thayer, *The Latest Evidence for Shaken Baby Syndrome*, 12 CRIM. JUST. 15, 16 (1997) (quoting a child abuse attorney's remarks that child death review teams are made up of "zealots" who are too quick to find a child has died of a homicide without proper support); see also Beverly Beyette, *Stigma of SIDS: Is it Sudden Infant Death, or is it Child Abuse? Grieving Parents Can Find Themselves Under Suspicion*, L.A. TIMES, Jan. 12, 1990, at A1 (reporting that in SIDS cases, child death review teams may go overboard in suspecting parental abuse as the cause of death).

90. See Beyette, *supra* note 89, at A1 (quoting Michael Durfee, who helped organize the first local child death review team).

91. Durfee, *supra* note 64, at 3172.

92. *Id.* at 3172.

93. See David Stoesz, *Suffer the Children: How Government Fails its Most Vulnerable Citizens - Abused and Neglected Kids*, 28 WASH. MONTHLY 20, 22 (1996) (stating that confidentiality laws should not be used to prevent child death review teams from investigating child deaths).

94. See ADVISORY, A NATION'S SHAME, *supra* note 65, at 8 (explaining how confidentiality laws and denial of access to child abuse reports has hindered investigations by child death review teams).

95. *Id.*

96. See 45 C.F.R. § 1340.14(i)(2)(i) (1997) (setting forth the confidentiality requirements for states to receive block grants for child abuse and neglect prevention); see also 45 C.F.R. § 1340.20 (1997) (stating that all state programs that receive funding under the Child Abuse and Neglect Prevention Program must be in compliance with the confidentiality requirements of the act).

97. See 45 C.F.R. § 1340.14(i)(2)(i) (1997) (stating that confidentiality laws hinder child death review teams from receiving information on child deaths); see also ADVISORY, A NATION'S SHAME, *supra* note 65, at 5 (stating that Federal government statutes relating to confidentiality make exceptions for child death review teams).

investigating child abuse.⁹⁸ However, the Department of Justice, which controls the Index, no longer allows local child death review teams access to the Index.⁹⁹ This has hindered the effectiveness of review teams who use information of past child abuse in order to help determine if a suspicious child death was caused by abuse.¹⁰⁰

C. *Lance's Law Smooths the Path for Child Death Review Teams*

Lance's Law addresses child death review teams in two ways.¹⁰¹ First, it eliminates the confidentiality requirements that barred child death review teams' access to files on reported child abusers.¹⁰² These confidentiality requirements forbid any agent reporting child abuse from disclosing information contained in the report to unauthorized sources.¹⁰³ Lance's Law allows child death review teams investigating the death of a child access to any child abuse reports relating to the deceased child, the deceased child's siblings, or the suspects that are in the Child Abuse Central Index.¹⁰⁴

Furthermore, Lance's Law permits child death review teams access to reports of alleged child abuse that social, medical, and protection agency workers are required to make when they suspect a child is being abused.¹⁰⁵ Child death review teams may share this information along with other information they have gathered from other child death review teams.¹⁰⁶ By making information contained in child abuse reports and the Child Abuse Central Index available to local child death review teams, the Legislature hopes to make child death review teams better able to prevent further child deaths.¹⁰⁷

98. CAL. PENAL CODE § 11166.9 (West 1992 & Supp. 1998).

99. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 644, at 2 (Apr. 2, 1997) (explaining that in 1995, after several lawsuits on the matter, the Department of Justice stopped supplying information to child death review teams).

100. See *supra* note 95 and accompanying text.

101. See *supra* notes 98-100, *infra* notes 102-12 and accompanying text (explaining why child death review teams were not allowed access to child abuse reports and what Lance's Law now allows child death review teams access to).

102. See CAL. PENAL CODE § 11170(b)(4) (amended by Chapter 844) (granting access to confidential child abuse reports to child death review teams).

103. See *id.* § 11167.5 (West 1992 & Supp. 1998) (propounding the confidentiality and disclosure requirements of child abuse reports).

104. See *id.* § 11170 (amended by Chapter 844) (enunciating the scope of child abuse reporting information to which child death review teams are granted access).

105. *Id.*

106. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 644, at 3 (July 15, 1997) (explaining that Chapter 842 will allow child death review teams to share information with other teams); see also CAL. PENAL CODE § 11167.5(b)(14) (amended by Chapter 844) (allowing child death review teams to share information related to child deaths).

107. See SENATE COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF SB 644, at 2 (Apr. 8, 1997) (explaining that access to the Child Abuse Central Index is necessary for child death review teams to prevent the death of the siblings of the deceased child).

Lance's Law also creates a Child Death Review Council.¹⁰⁸ This Council will review child death reports on a statewide basis in order to make recommendations about how to better coordinate the efforts of local child death review teams.¹⁰⁹ The Council is also charged with disseminating preventive information to the public to curb future child deaths and track trends in child deaths within the state.¹¹⁰ A number of child death review advocates believe that state level coordination of local teams will make for more complete child death reviews.¹¹¹

However, the Child Death Review Council is little more than a label the Legislature has given to the Department of Justice working in conjunction with social, health, medical, and child protective agencies overseeing child death prevention issues.¹¹² Most child abuse prevention issues were previously handled by the same collective group of agencies.¹¹³ The Legislature has declared that these agencies must share information contained within their database concerning child abuse statistics and its reports with the other agencies represented in the Child Death Review Council.¹¹⁴ This Legislative directive will eliminate confusion about how the Department of Justice relates to other child welfare agencies, and it will help to increase the accuracy and scope of child death prevention information that the Department of Justice produces.¹¹⁵

D. Board of Prison Terms' Access to the Child Abuse Central Index

Before Chapter 24 was enacted, the Board of Prison Terms¹¹⁶ was allowed to use filed reports of child abuse during parole violation hearings.¹¹⁷ However, this proved to be unmanageable in many cases because these reports had limited value in proving a parole violation due to child abuse and they contained information that

108. See CAL. PENAL CODE § 11166.9(a)(2) (amended by Chapter 842) (establishing a Child Death Review Council); see also SENATE COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF SB 644, at 3 (Apr. 8, 1997) (stating that Chapter 842 will create a Child Death Review Council).

109. See CAL. PENAL CODE § 11166.9(a)(2) (amended by Chapter 842) (setting forth the responsibilities and duties of the Child Death Review Council).

110. *Id.*

111. See ADVISORY, A NATION'S SHAME, *supra* note 65, at 4 (describing how a number of states have a state child death review team that coordinates with local teams).

112. Compare CAL. PENAL CODE § 11170 (West 1992 & Supp. 1998) (setting forth the responsibilities of the Department of Justice and other agencies related to child welfare) with CAL. PENAL CODE § 11170 (amended by Chapter 842 and 844) (outlining the same functions for the Department of Justice, working with other agencies, as prior law had outlined).

113. See *id.* § 11166.9(e)-(f) (West 1992 & Supp. 1998) (outlining what the Department of Justice, working with other agencies, may do to prevent child deaths and abuse).

114. *Id.* § 11166.9(b)(1) (amended by Chapter 844).

115. See ADVISORY, A NATION'S SHAME, *supra* note 65, at 5 (explaining the benefits of having a Child Death Review Council at the state level).

116. See CAL. PENAL CODE § 11167.5(a) (West 1992 & Supp. 1998) (explaining that the Board of Prison Terms is responsible for pursuing parole violations).

117. See *id.* § 11167.5(b)(9) (amended by Chapter 24) (maintaining that the Board of Prison Terms may subpoena child abuse reports to the extent that they are relevant).

needed clarification.¹¹⁸ When the Board of Prison Terms attempted to substantiate the reports, it needed to request that the social worker who wrote the report come forward and testify.¹¹⁹ However, the Board was usually rebuffed by the social worker who believed that confidentiality laws prohibited the disclosure of information on the report.¹²⁰ Therefore, the Board could not meet its burden of proof in demonstrating that the parolee had committed a crime and should be put back in jail.¹²¹

Chapter 24 increases the usefulness of child abuse reports during a parole violation hearing.¹²² Specifically, Chapter 24 permits the Board of Prison terms to subpoena the child protective agency workers who filed the report.¹²³ These workers should be able to clarify any ambiguities in the report which should help the Board of Prison Terms meet its burden of proof requirements.¹²⁴ Without the ability to subpoena these workers, the Board of Prison terms had difficulty in incarcerating those parolees who violated their parole by committing child abuse.¹²⁵ The confidentiality requirement cited by child protection workers will no longer be infringed upon in these cases since the workers will merely verify reports that the Board of Prison Terms are already allowed to subpoena.¹²⁶

E. Access to the Child Abuse Index by Those Whose Names are Listed Within It

The Child Abuse Central Index has been maintained for over 30 years, and in that time has listed a large number of reports on both accused abusers and victims.¹²⁷ These reports are labeled and maintained using a three tiered system.¹²⁸ Reports that are found to be true are maintained permanently in the Index.¹²⁹ Reports that are inconclusive, but not unfounded, are also maintained permanently

118. See SENATE PUBLIC SAFETY COMMITTEE, COMMITTEE ANALYSIS OF AB 1536, at 1 (Apr. 20, 1997) (explaining why child abuse reports alone are not enough to prosecute a parolee).

119. *Id.*

120. See *id.* at 2 (stating that the author of the report usually refuses to testify).

121. *Id.* (explaining that without the opportunity to clarify the child abuse report, the hearing officer may have trouble meeting the preponderance of the evidence standard).

122. *Id.*

123. See *id.* § 11167.5(b)(9) (amended by Chapter 24, 842, and 844) (explaining that the Board of Prison Terms may subpoena a child protective worker to explain their report).

124. See *supra* note 118 (expounding on the reasons why the Board of Prison Terms needs to verify with testimony in court child abuse reports).

125. See *supra* notes 107-10 and accompanying text (stating the problems that the Board of Prison Terms has in convicting parolees of child abuse).

126. See CAL. PENAL CODE § 11167.5 (West 1997) (stating that disclosure to an unauthorized person is a misdemeanor); *id.* (allowing the Board of Prison Terms to subpoena child abuse reports for use at trial).

127. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1065, at 3 (Apr. 2, 1997) (explaining the history of the Child Abuse Central Index).

128. See CAL. PENAL CODE § 11165.12(a)-(c) (explaining that child abuse reports have three labels, "substantiated," "unsubstantiated," and "unfounded").

129. See 65 Ops. Cal. Att'y Gen. 335, 336 (1982) (establishing time periods regarding when and if reports are to be erased).

in the Index.¹³⁰ While these reports are inconclusive, there currently is no time limit requiring reports to be removed.¹³¹ Reports found to be false are regularly expunged from the Index.¹³²

Under prior law, when a report was sent to the Department of Justice for placement in the Index, the Department of Justice was not required to inform the accused or the victim that their name appears in the index.¹³³ Furthermore, there was no administrative procedure for the removal of a person's name from the Index.¹³⁴ Those who wished to have their name removed, whether they were the victims or the accused, needed to obtain a judicial decree that their name must be removed from the Index.¹³⁵ This process was time consuming and was hampered by the fact that those listed in the Index could not access reports in the Index, to verify what information if any reports contained about them.¹³⁶

Lance's Law offers some relief to those who wish to have their names removed from the Index.¹³⁷ First, it requires the Department of Justice to notify those who are to be placed in the Index. Specifically, the Department of Justice must send a letter stating which reporting agency filed the report.¹³⁸ This may make it easier for those whose names are in the Index to track down the agency making the report and to contest its findings.¹³⁹ However, this does not include people who were placed in the Index prior to the enactment of Lance's Law. Second, it sets out a procedure for people who are in the Index to obtain the relevant report in which they are named.¹⁴⁰ The information they receive may be helpful to those who wish to contest the report in the Index.

Furthermore, Lance's Law provides for the removal of reports that are inconclusive after a ten year period.¹⁴¹ Reports of abuse that have been found to have merit, but are not conclusive as to whether there was abuse, will be removed from the Index if no other reports of abuse are filed about the accused.¹⁴² This increases

130. *Id.*

131. *Id.*

132. *Id.*

133. See ASSEMBLY COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF SB 644, at 2 (July 16, 1997) (explaining that under then-existing law, no notice was given to those in the index).

134. See SENATE COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF SB 644, at 3 (Apr. 8, 1997) (explaining how a person must go about removing his name from the Index).

135. *Id.* at 3.

136. *Id.*

137. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 644, at 1 (July 15, 1997) (explaining that Lance's Law will also allow people listed on the index a means of having their names removed from the list, especially in those cases where the victim wishes his name removed).

138. CAL. PENAL CODE §11170(b) (amended by Chapter 842).

139. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 644, at 1 (July 15, 1997) (stating that Chapter 842 will make it easier for people to have their names removed from the Child Abuse Central Index).

140. CAL. PENAL CODE § 11170(b) (amended by Chapter 24).

141. *Id.*

142. *Id.*

the accuracy of the Index and ensures that it remains updated.¹⁴³ Finally, Lance's Law allows victims to request removal of their names from the Index when they become an adult.¹⁴⁴ The Legislature has found that the name of the abused serves no purpose once the victim has become an adult, and the name should be removed if requested by the victim.¹⁴⁵

IV. DUE PROCESS ISSUES

Whenever a state action may infringe on an individual's protected liberty or property interest, the state must set up procedural safeguards that meet the Fourteenth Amendment's requirements.¹⁴⁶ The Supreme Court has established a two part test to determine whether a state's action violates the Fourteenth Amendment's Due Process Clause.¹⁴⁷ First, the Court decides if there is a substantive right such as a protected liberty or property interest which the state action infringes upon.¹⁴⁸ The Court then looks at the individual's interest in the substantive right and the possibility that their interest will be erroneously deprived because of insufficient procedural requirements.¹⁴⁹ The Court balances this against the state's interest, the availability of alternative procedures that would reduce the likelihood of error, and the burden on the state to implement those alternative procedures.¹⁵⁰ If the balance weighs in favor of the individual, then the court will find that the individual was deprived of due process, but if the balance weighs in favor of the state, then the individual has been given the required due process.¹⁵¹

A. *Is a Substantive Right Violated?*

Historically, people have had a protected liberty interest in the preservation of their family privacy and the right to raise their family as they see fit.¹⁵² They also

143. See SENATE APPROPRIATIONS COMMITTEE FISCAL SUMMARY, COMMITTEE ANALYSIS OF SB 644, at 1 (May 12, 1997) (stating that 45,000 records will be deleted under Chapter 842, increasing the accuracy and efficiency of the index).

144. CAL. PENAL CODE § 11170(f) (added by Chapter 842).

145. See SENATE COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF SB 644, at 6-7 (Apr. 8, 1997) (explaining that although maintaining the victim's names in the Index is useful when they are children, its usefulness is negated when the victim becomes an adult).

146. See U.S. CONST. amend. XIV, § 2 (stating that no citizen can be deprived of life, liberty, or property by a state without due process of law).

147. *Mathews v. Eldridge*, 424 U.S. 319, 326 (1972).

148. *Id.*

149. *Id.* at 319.

150. *Id.*

151. *Id.*

152. See *Santosky v. Kramer*, 455 U.S. 745, 760 (1982) (explaining that preventing termination of parent/child bond is an important liberty interest); *Moore v. East Cleveland*, 431 U.S. 494, 499 (1977) (recognizing that freedom of choice in family matters is an important liberty interest); *Board of Regents v. Roth*, 408 U.S. 564, 566-70 (1972) (limiting the scope of protected interests in state created rights); *Meyer v. Nebraska*, 262 U.S. 390, 399

have a protected liberty interest in maintaining their reputation if detriment to that reputation will affect other liberty interests.¹⁵³ Whether these liberty interests are infringed upon by California's maintenance of a Child Abuse Central Index is debatable.¹⁵⁴ California's child abuse registry law has not been questioned in the courts as to whether it violates the Fourteenth Amendment. However, similar child abuse registries in others states have been challenged with mixed results.¹⁵⁵

Courts have differed on whether registration in a child abuse index infringes on family privacy.¹⁵⁶ In *Bohn v. County of Dakota*,¹⁵⁷ the court held that being registered as a suspected child abuser in a state child abuse registry infringed on the family privacy and reputation interests of the individual.¹⁵⁸ However, in *Hodge v. Jones*,¹⁵⁹ another court held that merely being listed in the states child abuse registry was not enough to invade upon the individual's right to family privacy.¹⁶⁰ Furthermore, the court reasoned that confidentiality laws ensure that the information in the database would not spread to the community.¹⁶¹ Both these cases turned on how broadly the court defined the family interest in remaining free from government interference and how invasive the court found the state action.¹⁶²

Whether Lance's Law is found to infringe on family privacy by creating greater access to child abuse reports will turn on how invasive the court views registry in the Index and how broadly the court interprets family privacy.¹⁶³ In *Hodges*, the court limited the scope of family privacy interests to instances where the family wanted to prevent disclosure of private information, and to prevent state interference with important family decisions, such as: (1) punishment of the child; (2) education of the child; and (3) how the child is brought up.¹⁶⁴ Furthermore, the court found that being registered in a child abuse index did not directly affect family privacy.¹⁶⁵ The court in *Bohn*, however, reasoned that an individual being registered in a child abuse index directly affected the family.¹⁶⁶

(1923) (stating that the Fourteenth Amendment protects the right to raise children).

153. See *Paul v. Davis*, 424 U.S. 693, 699 (1976) (holding that unfavorable public stigma of an individual created by a state action alone is not enough to violate the Fourteenth Amendment. Some other right must be infringed upon as well).

154. *Id.*

155. Moore, *supra* note 29, at 2065.

156. *Id.* at 2066.

157. 772 F.2d 1433 (8th Cir. 1985), *cert. denied*, 475 U.S. 1014 (1986).

158. *Bohn*, 772 F.2d at 1435.

159. 31 F.3d 157 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 581 (1994).

160. *Hodge*, 31 F.3d at 168.

161. *Id.* at 159.

162. *Id.* at 168.

163. *Id.* at 160.

164. See Nicholas Stavlas, Note, *Confidential Maintenance of Unsubstantiated Child Abuse Investigation Reports and the Scope of Familia Privacy*, 54 MD. L. REV. 1005, 1006-07 (1995) (describing how one family's privacy was invaded by child welfare authorities).

165. *Hodge*, 31 F.3d at 161.

166. *Bohn*, 772 F.2d at 1437.

Lance's Law may increase the invasiveness of California's child welfare system into family privacy.¹⁶⁷ Lance's Law expands prior law by allowing greater access to the child abuse index.¹⁶⁸ The use of those reports by child placement agencies and child death review teams to conduct possibly intrusive investigations that may invade the sanctity of the family could be found to violate the Fourteenth Amendment.¹⁶⁹ However, the *Hodge* court reasoned that speculation of increased state intrusion, because a member of the family is registered in a child abuse database, is not by itself enough to invade family privacy.¹⁷⁰

B. Procedural Due Process

If a court determines that Lance's Law infringes on the protected liberty interest of family privacy, then the court will determine if the state has met the burden of providing procedural due process.¹⁷¹ The Supreme Court in *Mathews v. Eldridge*,¹⁷² set out a balancing test to decide if the state meets this burden.¹⁷³ The Court in *Eldridge* balanced the interest of the individual in the protected right against the state's interest.¹⁷⁴ The Court also balanced the possibility that procedural error would lead to improper decisions against the burden on the state to provide an alternative procedural process.¹⁷⁵

When applying the balancing test in *Eldridge* to the changes made in California's registry law by Chapters 842, 844, and 24, it is possible that the changes made shift the balance in favor of finding that the registry satisfies the due process requirement. First, Chapters 842, 844, and 24 make the registry more accurate by allowing unsubstantiated reports to be removed from the registry after ten years.¹⁷⁶ This helps to limit the possibility that an agency using information in the registry will improperly interfere in the affairs of a family based on false information from the registry.¹⁷⁷ This would result in reducing the possibility that an individual's protected family interest will be infringed upon due to procedural errors.¹⁷⁸

167. See *supra* note 31 and accompanying text (describing how Lance's Law expands who may look at child abuse reports).

168. *Id.*

169. See *supra* note 89 and accompanying text (describing how invasive some child welfare agencies such as a child death review team can be).

170. *Hodge*, 31 F.3d at 160.

171. *Mathews v. Eldridge*, 424 U.S. 319, 325 (1976).

172. 424 U.S. 319 (1976).

173. *Eldridge*, 424 U.S. at 324.

174. *Id.* at 328.

175. *Id.* at 329.

176. See *supra* note 141 and accompanying text.

177. See *supra* note 144 and accompanying text.

178. See *supra* notes 141-145 and accompanying text.

Second, Chapters 842 and 844 give victims an avenue of redress for expunging unsubstantiated reports filed in the index.¹⁷⁹ This provides an individual with greater procedural due process before the state interferes with his rights.¹⁸⁰ Furthermore, by expunging unsubstantiated reports, the accuracy of the Index is increased even more.¹⁸¹ Chapters 842 and 844 lessen the accuracy in reporting for the Department of Justice when a child placement agency is seeking information on an individual the agency wishes to place a child with in an emergency situation.¹⁸² However, since this would only happen in emergency situations where the burden on the state to find a suitable home for the child is high, this provision probably does not adversely effect the balancing test.¹⁸³

V. CONCLUSION

Chapters 842, 844, and 24 expand access to the Child Abuse Central Index.¹⁸⁴ Whenever more people have access to sensitive information such as that contained in a child abuse report, there is always a possibility that information may be leaked and become public knowledge.¹⁸⁵ However, reports that are unsubstantiated may be helpful to a child protective agency's investigations.¹⁸⁶ A number of unsubstantiated reports on one individual may point to a pattern of child abuse that the agency may wish to follow up, or the reports will make the agency dealing with the child aware of a possible danger to the child's safety.¹⁸⁷ However, when unsubstantiated information is leaked to the public it does little but damage the reputation of a person who may have been falsely accused.¹⁸⁸

The Legislature has addressed concerns over inaccurate reports within the Child Abuse Central Index in Chapters 842 and 844.¹⁸⁹ By allowing individuals who are named as abusers in unsubstantiated reports on the index access to the information and a means of having that information erased, Lance's Law has increased the

179. See *supra* notes 138-140 and accompanying text.

180. See *supra* note 136 and accompanying text.

181. See *supra* note 143 and accompanying text.

182. See *supra* note 61 and accompanying text.

183. See *supra* notes 44-54 and accompanying text (discussing the problems agencies face in placing children in decent homes).

184. See *supra* notes 30-145 and accompanying text (discussing the effects of Chapter 24, 842, and 844 on the Child Abuse Central Index).

185. See generally *Rothman v. Jackson*, 49 Cal. App. 4th 1134, 57 Cal. Rptr. 2d 284 (1996) (stating that a child abuse report was leaked to the press).

186. See *Joni Jones, Note, Maintaining Unsubstantiated Records of "Suspected" Child Abuse: Much Ado About Nothing or a Violation of the Right to Privacy?*, 1995 UTAH L. REV. 887, 895-96 (1995) (stating that several reports for one child may warrant investigation).

187. *Id.*

188. See *Rothman v. Jackson*, 49 Cal. App. 4th 1134, 1138, 57 Cal. Rptr. 2d 284, 287 (1996) (recounting the negative press that celebrity Michael Jackson received do to a leaked child abuse report).

189. See *supra* notes 124-45 and accompanying text (explaining the accuracy problems that may exist in the Child Abuse Central Index and what the Legislature has done to address these issues).

accuracy of the child abuse reporting system.¹⁹⁰ However, the legislature has increased the possibility that this sensitive information may be leaked to the public by allowing greater access to it.

190. See *supra* notes 134-45 and accompanying text (describing how Lance's Law affects individuals who wish to remove their name from the Child Abuse Central Index).

Eliminating the Use of Civil Compromise in Cases of Domestic Violence, Elder Abuse, and Child Abuse

J. Cross Creason

Code Sections Affected

Penal Code § 1377 (amended).

SB 97 (Alpert); 1997 STAT. Ch. 243

I. INTRODUCTION

An act can give rise to both criminal and civil liability.¹ However, privately settling civil claims arising out of a crime will not ordinarily bar a prosecution because a crime is by definition a public wrong and a breach of the "public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity."² Some states, however, in cases of minor offenses allow for "civil compromise," whereby criminal liability may be avoided if the civil claim arising out of the purported offense is settled to the satisfaction of the victim.³ In

1. 15A AM. JUR. 2D *Compromise and Settlement* § 26 (1976).

2. 4 WILLIAM BLACKSTONE, COMMENTARIES *5; see JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 1-2 (2d ed. 1995) (asserting that crimes, more than just harming private parties, involve a "social harm" to the whole society); *id.* (arguing that it is the stigma and social condemnation accompanying criminal conviction that most distinguishes it from civil judgment); see also Henry M. Hart, *The Aims of the Criminal Law*, 23 LAW & CONTEMP. PROBS. 401, 404 (1958) (arguing that what is done to people convicted of crimes, with the exception of the death penalty, cannot be used to distinguish them from "unsuccessful defendants in civil proceedings"); *id.* at 404 n.10 (noting the similarity between criminal sanctions and civil sanctions such as institutionalization of insane persons and punitive money damages); LEO KATZ, BAD ACTS AND GUILTY MINDS 28 (1987) (asserting that the difference between civil penalties and the punishment associated with a criminal conviction is that "the punishment condemns, the penalty does not"); 21 AM. JUR. 2D *Criminal Law* § 190 (1981) (stating that while condonation or settlement with a criminal may bar civil damages, generally the state is not prevented from proceeding with prosecution); *id.* (noting that a victim who agrees not to inform or prosecute a perpetrator in return for a bribe or settlement may be guilty of the offense of compounding a crime).

3. See CAL. PENAL CODE § 1377 (West 1982) (amended by Chapter 243) (providing authority for courts to compromise misdemeanors for which the victim has a civil action); see also *People v. Stephen*, 182 Cal. App. 3d Supp. 14, 27, 227 Cal. Rptr. 380, 388 (1986) (declaring that the legislative intent behind the civil compromise statute is not to insure maximum compensation for the victim, rather the purpose is to remove from criminal prosecution those cases where the public is best served by requiring the accused to make restitution directly to the victim instead of subjecting him to criminal sanctions for the general welfare of society); *Holsey v. State*, 61 S.E. 836, 836 (Ga. Ct. App. 1908) (reversing a conviction for driving a horse without consent of the owner because of ratification by the owner, who gave the defendant a choice of a whipping or buying the horse, which defendant chose to buy, on the theory that this manifested an acquiescence that related back to the event, removing the element of non-consent); *id.* (confining the ruling to cases where the offense involves no crime against society or good morals and only when the crime and agreement involve redress of private wrongs).

addition to providing compensation to victims,⁴ civil compromise checks the great discretionary power of the police and the prosecutor in deciding whether to arrest and prosecute.⁵ Civil compromise also furthers administrative efficiency by resolving relatively minor disputes and eliminating the need for both civil and criminal proceedings.⁶

Chapter 243,⁷ which eliminates the availability of civil compromise in misdemeanor cases of domestic violence, elder abuse, and child abuse, distinguishes between misdemeanors which are appropriate for civil compromise and those which are not.⁸ In cases where the Legislature has not expressly excluded the availability of civil compromise for specific crimes, California courts have performed a similar line-drawing role by exercising their discretionary power to allow or disallow a civil compromise.⁹ Courts have identified three main factors for determining the appropriateness of civil compromise for particular misdemeanors in the absence of specific statutory language: (1) Whether the civil injury and the criminal violation correspond; (2) whether the public injury is fully vindicated by the settlement; and (3) whether the victim's settlement agreement is truly voluntary.¹⁰ Applying these

4. See CAL. PENAL CODE § 1378 (West 1982) (requiring the injured person to acknowledge receiving satisfaction for the injury before the court can grant a civil compromise); see also *People v. Stephen*, 182 Cal. App. 3d Supp. 14, 27, 227 Cal. Rptr. 380, 388 (1986) (stating that the public interest is best served in cases where civil compromise is appropriate by "requiring the accused to make restitution directly and immediately to the individual victim instead of subjecting him to criminal sanctions for the welfare of society in general").

5. See *People v. Tischman*, 35 Cal. App. 4th 175, 180, 40 Cal. Rptr. 2d 650, 653 (1995) (quoting the case of *State ex rel. Fitch v. Roxbury Dist. Court*, 629 P. 2d 1341, 1343 (Wash. Ct. App. 1981), which stated that a "trial court's impartial judgment in determining whether to dismiss the charge when based upon restitution to the victim can bring to bear many factors important in the furtherance of justice which are not within the purview of the police and prosecutor").

6. *Tishman*, 35 Cal. App. 4th at 178, 40 Cal. Rptr. 2d at 652.

7. Chapter 243, eliminating civil compromise for misdemeanor domestic violence, child abuse, and elder abuse, which amends California Penal Code § 1377, incorporates the language previously enacted by SB 115 (Burton), which eliminated civil compromise only in cases of domestic violence. Where relevant, reference is made to documents pertaining to SB 115.

8. See 15A AM. JUR. 2D *Compromise and Settlement* § 26 (1976) (noting that compromise is usually available only for minor offenses and many statutes only allow compromise in misdemeanor cases); see also Elizabeth Fernandez, *Domestic Violence Law May Get Tougher*, S.F. EXAMINER, Mar. 14, 1997, at A8 (quoting State Senator Burton, author of SB 115, as stating that civil compromise was meant to deal with property crimes such as forgery or bicycle theft and not things like domestic violence); Elizabeth Fernandez, *Supervisors Toughen Stance Against Abuse*, S.F. EXAMINER, Jan. 19, 1996, at A5 [hereinafter Fernandez, *Supervisors Toughen Stance*] (reporting that the San Francisco County Board of Supervisors committee approved a resolution disapproving of judges' use of civil compromise in domestic violence cases).

9. See CAL. PENAL CODE § 1378 (West 1982) (providing that discharge from criminal prosecution is within the discretion of the court provided certain preconditions exist).

10. See *People v. Moulton*, 131 Cal. App. 3d Supp. 10, 21-23, 182 Cal. Rptr. 761, 767-68 (identifying elements to be used by the trial court in determining whether to grant a civil compromise); *id.* at 23, 182 Cal. Rptr. at 768 (stating that the seriousness of the injury to the victim and the factual circumstances of the offense are to be considered in deciding whether civil compromise adequately vindicates the harm to the public); see also *Tishman*, 35 Cal. App. 4th at 181, 40 Cal. Rptr. 2d at 654 (rejecting the strict requirement of "full congruence" between civil and criminal elements and requiring only that the "civil cause of action share [] a common element with the criminal offense").

factors to the crime of misdemeanor hit-and-run, for example, California courts have differed over whether the criminal element of leaving the scene of an accident corresponds to a civil injury and over whether the public injury is compensated by a civil compromise.¹¹

Critics of circumstances when civil compromise was allowed by judges in domestic violence cases saw a conflict between the goals and limiting principles behind civil compromise and the fact that it was permitted by statute and was being used in domestic abuse cases.¹² Specifically, proponents of Chapter 243 felt that judges in San Francisco were treating domestic violence as merely a private injury rather than a serious crime by allowing civil compromise in approximately 20% of misdemeanor domestic violence cases.¹³ In addition to the reaction against the over-use of civil compromise, supporters of Chapter 243 fear that the settlements would often not result from voluntary agreements.¹⁴

II. LEGAL BACKGROUND

Eliminating civil compromise in domestic abuse cases comes during a period of increased awareness of the issue and after a series of legislative efforts to bring

11. See *People v. O'Rear*, 220 Cal. App. 2d 927, 931, 34 Cal. Rptr. 61, 64 (1963) (requiring that the civil injury be co-extensive with the criminal violation and holding that because the crime of hit-and-run is not complete until the accused has fled, it is not co-extensive with the property damage suffered by the victim); see also *People v. McWhinney*, 206 Cal. App. 3d Supp. 8, 12, 254 Cal. Rptr. 205, 207 (1988) (holding that misdemeanor hit-and-run is not appropriate for civil compromise because the injury to the public in the form of higher insurance premiums resulting from hit and run is not compensated for by the civil compromise). But see *Tischman*, 35 Cal. App. 4th at 177, 40 Cal. Rptr. 2d at 652 (holding that misdemeanor hit-and-run, resulting in property damage alone, is a proper subject for civil compromise); *id.* at 181 n.4, 40 Cal. Rptr. 2d at 654 n.4 (stating that a court would have discretion to reject civil compromise in a misdemeanor hit-and-run case if there were extenuating circumstances, for example, if law enforcement resources were used to track down the defendant).

12. See Greg Lucas, *Assembly OKs Tougher Abuse Bill*, S.F. CHRON., Apr. 12, 1996, at A17 (quoting the coordinator of the San Francisco Violence Consortium as saying that for years the message that domestic violence is a crime was promoted and that civil compromise, which amounts to an apology, is not appropriate for a crime); see also *Judges Accused of Leniency in Beatings*, SAN DIEGO UNION-TRIB., Jan. 14, 1996, at A3 (quoting member of the San Francisco Neighborhood Legal Assistance Foundation as saying that for years there was a fight to get the police to treat domestic violence as a crime, but that now judges, by using civil compromise too liberally, are treating domestic violence as a civil matter rather than as a crime).

13. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 115, at 3 (Apr. 1, 1997) (stating that the impetus for SB 115 was the high incidence of civil compromise in domestic abuse cases in San Francisco); see also *Fernandez*, *supra* note 8, at A8 (reporting a study by the Family Violence Project showing that civil compromise was used in San Francisco domestic violence cases 147 times over a 21 month period beginning in 1994, and that no other county surveyed used the remedy in more than one case).

14. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 97, at 1 (July 8, 1997) (asserting that abusers could take advantage of their close relationship to the victim and that the settlement would be the result of undue influence by the abuser); *id.* at 3 (arguing that because child and elder abuse statutes are premised on the inability of frail individuals to make informed decisions there can be no consent to the abuser's crime).

such cases to adjudication.¹⁵ For example, in 1995, California terminated pre-trial diversion as an option in domestic violence cases.¹⁶ Moreover, several jurisdictions in California have implemented "no-drop" policies which restrict the ability of domestic violence victims to withdraw a complaint and limit the discretion of prosecutors to drop charges when the victim is unwilling to participate in the prosecution.¹⁷

A. Before Chapter 243

Prior to Chapter 243, civil compromise was unavailable for certain misdemeanors.¹⁸ Reflecting the judgement that civil compromise should have limited application in domestic violence cases,¹⁹ civil compromise was only available under certain conditions, such as the accused could not have compromised a domestic violence case within the previous seven years.²⁰

15. See Angela Corsilles, Note, *No Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution*, 63 *FORDHAM L. REV.* 853, 853 (1994) (describing a "veritable explosion in the number of laws enacted to combat the problem of woman battering" in the past fifteen years).

16. See 1995 Cal. Legis. Serv. ch. 641, sec. 2, at 3965 (West) (repealing CAL. PENAL CODE §§ 1000.6-1000.11) (eliminating pre-trial diversion, which allowed for avoidance of a criminal conviction conditioned upon completion of a counseling program, as an option for misdemeanor domestic violence offenses); *id.* sec. 1, at 3965 (West) (finding that domestic violence is a serious and widespread crime and that diversion is inadequate to address domestic violence as a serious crime, although diversion programs are sometimes effective).

17. See Corsilles, *supra* note 15, at 858-64 (discussing generally "no-drop" policies, including implementation in California jurisdictions); *id.* at 864 (stating that although California has not adopted legislation specifically urging "no-drop" policies, California Code of Civil Procedure § 1219 does implicitly recognize local use of such policies by according victims special treatment when they refuse to testify); CAL. CIV. PROC. CODE § 1219(c) (West Supp. 1997) (prohibiting incarceration following finding of contempt for a victim of domestic violence who refuses to testify, but allowing the court to require counseling or community service, and allowing incarceration after subsequent finding of contempt for refusal to testify arising out of the same case).

18. See CAL. PENAL CODE § 1377(a)-(c) (West Supp. 1997) (prohibiting civil compromise when the misdemeanor is committed by or upon a peace officer in the course of his or her duties, when the misdemeanor is committed riotously, and when it is committed with the intent to commit a felony); 1992 Cal. Stat. ch. 475, sec. 1, at 1861 (West) (amending CAL. PENAL CODE § 1377) (prohibiting compromise of a misdemeanor committed in violation of any court order described in California Penal Code § 273.6).

19. See 1993 Cal. Legis. Serv. ch. 219, sec. 219, at 1420-21 (West) (amending CAL. PENAL CODE § 1377) (providing that civil compromise of violations of § 6211 of the California Family Code or subdivision (b) of § 13700 of the Penal Code are subject to certain conditions); see also CAL. FAM. CODE § 6211(a)-(f) (West 1994) (defining "domestic violence" as abuse committed against a spouse or former spouse; a cohabitant or former cohabitant; a person with whom the respondent has or has had an engagement or dating relationship; a person with whom the respondent has had a child; "a child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected"; or "any other person related by consanguinity or affinity within the second degree").

20. See 1992 Cal. Stat. ch. 475, sec. 1, at 1861 (West) (amending CAL. PENAL CODE § 1377) (prohibiting civil compromise of domestic violence cases when the defendant had previously compromised a domestic violence case with any victim within seven years of the current offense and requiring, upon objection by the prosecution to the proposed compromise, a hearing at which the victim acknowledged and presented proof of satisfaction for the injury); see also ARIZ. REV. STAT. ANN. § 13-3981 (West 1989) (allowing civil compromise in cases where the defendant is accused of an act involving assault, threatening, or intimidating, or is accused of a misdemeanor domestic violence offense only upon recommendation of the prosecuting attorney); IDAHO CODE § 19-3401 (1987)

Seeking to deter future abuse, prior law required that the person accused of certain domestic violence offenses attend counseling as part of the compromise.²¹ Moreover, even if a crime is not expressly limited in its availability to civil compromise by statute and even though California law does not require the approval of the prosecuting attorney as in some states,²² a court may use its discretion and deny granting civil compromise in particular situations.²³

B. Chapter 243

Recognizing the inappropriateness of civil compromise in domestic violence cases, Chapter 243 removes the conditional availability of civil compromise and completely eliminates civil compromise in misdemeanor domestic violence cases.²⁴ Chapter 243 also prohibits civil compromise in cases of misdemeanor elder abuse because the same dangers exist in these situations.²⁵ Chapter 243 does not explicitly

(providing for civil compromise of misdemeanor cases unless committed by or upon a peace officer, riotously, or with intent to commit a felony, but with no specific qualifications for cases of misdemeanor domestic violence).

21. See 1993-94 Cal. Legis. Serv., First Ex. Sess., ch. 35, sec. 1, at 3964 (West) (amending CAL. PENAL CODE § 1377(e)) (providing that the court shall require defendants entering into civil compromise of a domestic violence case, as defined in § 6211 of the California Family Code or § 13700 of the California Penal Code, to attend a batterer's program of not less than eight hours).

22. See ARIZ. REV. STAT. ANN. § 13-3981 (West 1989) (requiring the recommendation of the prosecuting attorney for civil compromise in cases where the defendant is accused of a violent misdemeanor).

23. See CAL. PENAL CODE § 1378 (providing that a court, in its discretion, "may" allow for civil compromise); see also *supra* notes 9-11 and accompanying text (discussing the abuse of discretion standard used in reviewing grants of civil compromise).

24. See CAL. PENAL CODE § 1377(e) (amended by Chapter 243) (prohibiting civil compromise when a misdemeanor is committed by or upon any family member or upon any person when the violation involves a person described in § 6211 of the California Family Code or subdivision (b) of § 3700 of the California Penal Code); see also ALASKA STAT. § 12.45.120 (Michie 1996) (prohibiting civil compromise for misdemeanors committed against a spouse or former spouse, parent, child, grandchild, grandparent, one living in the same social unit residing in the same dwelling, or one who is not a spouse or former spouse but one formerly in a spousal relationship with the defendant); SENATE COMMITTEE ON CRIMINAL PROCEDURE, COMMITTEE ANALYSIS OF SB 115, at 2 (Mar. 11, 1997) (reporting a statement made by the bill's author that civil compromise fails to treat domestic violence as a crime, sending a message to victims and abusers that domestic violence is not a serious crime, and that prohibiting compromise will allow for the necessary intervention into and prevention of domestic violence); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 97, at 1 (July 8, 1997) (reporting a statement made by the bill's author that civil compromise can no longer be permitted in cases of domestic violence, elder abuse, and child abuse because of the risk of undue influence by the abuser and because allowing compromise sends the message that the abuse of people closest to us is not a serious crime).

25. See CAL. PENAL CODE § 1377(f) (amended by Chapter 243) (eliminating civil compromise for misdemeanors committed against elders in violation of California Penal Code § 368 or California Welfare and Institutions Code § 15656); see also CAL. PENAL CODE § 368(a) (West 1988) (prohibiting any person from willfully causing or allowing any elder or dependent adult, knowing that the person is a dependent adult or elder, to suffer unjustifiable physical pain or mental suffering, under conditions which threaten death or great bodily injury); *id.* § 368(a) (West 1988) (prohibiting, under conditions threatening great bodily injury or death, any person having the care or custody of any elder from willfully causing or allowing the elder or dependent adult's person or health to be injured, or willfully causing or allowing the dependent adult to be in a situation where his or her health or person is endangered); *id.* § 368(b) (West 1988) (prohibiting any person from willfully causing or allowing any elder or dependent adult, knowing that the person is a dependent adult or elder, to suffer unjustifiable physical pain or

ban civil compromise in cases of abuse of dependent adults charged under the provisions defining elder abuse and abuse of dependent adults.²⁶ Civil compromise with a particular dependent adult, however, may be barred by the ban on compromise of domestic violence offenses, which includes abuse committed against certain family members.²⁷ In any event, civil compromise is subject to the limitations on the court's discretion regarding the appropriateness of civil compromise mentioned above.²⁸ Finally, Chapter 243 bans civil compromise of misdemeanor child abuse and violations of protective orders relating to minors.²⁹

mental suffering, under conditions other than those which threaten death or great bodily injury); *id.* (prohibiting, under conditions other than those threatening great bodily injury or death, any person having the care or custody of any elder from willfully causing or allowing the elder or dependent adult's person or health to be injured, or willfully causing or allowing the dependent adult to be in a situation where his or her health is endangered); *id.* § 368(c) (West 1988) (prohibiting any caretaker of an elder or dependent adult from committing theft or embezzlement of an amount greater than four hundred dollars); *id.* § 368(d) (West 1988) (defining "elder" as any person 65 years of age or older); *id.* § 368(f) (West 1988) (defining "caretaker" as a person with the "care, custody, or control of or who stands in a position of trust with, an elder or dependent adult"); CAL. WEL. & INST. CODE § 15656(a)-(c) (West Supp. 1997) (defining crimes against elders and dependent adults using language identical to § 363 of the California Penal Code); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 97, at 1 (July 8, 1997) (reporting the statement of the author that civil compromise sends the message that abuse of those closest to us is not a serious crime, only a private matter that can be resolved with an apology or a payoff).

26. See CAL. PENAL CODE § 1377(f) (enacted by Chapter 243) (prohibiting civil compromise of misdemeanors committed against elders in violation of § 368 of the California Penal Code and § 15656 of the California Welfare and Institutions Code); see also CAL. PENAL CODE § 368(e) (West 1988) (defining "dependent adult" as any person between the ages of 18 and 64 with physical or mental limitations that limit his or her ability to do normal activities, or protect his or her rights, including an individual in a 24-hour health facility).

27. See CAL. PENAL CODE § 1377(e) (amended by Chapter 243) (prohibiting civil compromise of misdemeanors committed by or upon any family or household member described in § 6211 of the California Family Code or § 13700 of the California Penal Code); see also CAL. FAM. CODE § 6211(f) (West 1994) (including within the definition of domestic violence, abuse committed against any person related by consanguinity or affinity within the second degree).

28. See *supra* notes 9-11 and accompanying text (discussing the abuse of discretion standard of review for civil compromise cases).

29. See CAL. PENAL CODE § 1377(g) (enacted by Chapter 243) (prohibiting civil compromise of misdemeanors committed against a child under § 647.6 of the California Penal Code or § 11165.6 of the California Penal Code); *id.* § 647.6 (West Supp. 1997) (prohibiting annoying or molesting children under the age of 18); *id.* § 11165.6 (West Supp. 1997) (defining "child abuse" as physical injury inflicted on a child other than through accident; "sexual abuse of a child or any act or commission proscribed by § 273a" of the California Penal Code or § 273d of the California Penal Code; or neglect of a child or abuse of a child in out-of-home care); *id.* § 273a (West Supp. 1997) (prohibiting willful cruelty or unjustifiable punishment of a child and unlawful corporal punishment or injury to a child); *id.* § 1377(d) (amended by Chapter 243) (prohibiting compromise of cases involving a violation of a protective court order as described in § 273.6 and § 273.65 of the California Penal Code); *id.* § 273.65 (West Supp. 1997) (prohibiting intentional and knowing violations of restraining and protective orders relating to minors adjudged to be dependent children of the juvenile court).

III. ELIMINATING CIVIL COMPROMISE IN DOMESTIC ABUSE SITUATIONS

A. Arguments For Eliminating Civil Compromise

Opponents of civil compromise in domestic violence cases argue that abusers may take advantage of the reconciliation pattern that follows a battering incident.³⁰ For example, victims of domestic violence often regret their decision to participate in civil compromise because the cycle of abuse frequently continues—despite assurances from the batterer.³¹ Opponents of civil compromise also believe that civil compromise sends the message to abusers and their victims that society does not take abuse among people living together seriously when it allows the abuser to escape without serious outside intervention.³²

Proponents of Chapter 243 believe that these concerns relating to civil compromise will play a part in coercing or pressuring the victim into compromising with the abuser when prosecution is more appropriate.³³ Moreover, supporters of Chapter 243 assert that in cases of child and elder abuse, where the law is, in part, designed to protect victims who are unable to make informed decisions, the victim is often not truly capable of condoning crimes committed upon them.³⁴ And if it

30. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 115, at 3 (Apr. 1, 1997) (asserting that civil compromise deprives society of the opportunity to intervene and break the cycle of violence by allowing an abuser to take advantage of the “loving reconciliation” period when the woman is especially vulnerable to the abuser’s attempts to win her back while trying to isolate the couple from outside intervention).

31. See *Judges Accused of Leniency in Beatings*, SAN DIEGO UNION-TRIB., *supra* note 12, at A3 (reporting the case of a woman battered by her drunken boyfriend who wanted him to receive treatment rather than go to jail, who accepted a civil compromise that included treatment, but who was again beaten by the boyfriend); *id.* (reporting that the woman regretted that she had accepted the compromise, saying that she would never have accepted such a solution if a stranger had beaten her, and quoting the victim as saying that women are vulnerable when someone they love beats them).

32. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 115, at 3 (Apr. 1, 1997) (stating that civil compromise treats domestic violence as a private issue reinforcing the batterer’s belief that the abuse is not an issue of public concern, possibly leading the abuser to think he may continue with impunity, and it also tells the woman, at a time when her self-esteem is damaged and she possibly believes that she is the cause of the abuse, that society will not intervene and that she does not merit society’s attention); see also Greg Lucas, *Accused Batterers Can’t Pay to Erase Charges Under New Law*, S.F. CHRON., June 10, 1997, at A20 (stating that advocacy groups argue that allowing civil compromise creates a perception that domestic violence is not a serious crime).

33. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 97, at 1 (July 8, 1997) (stating the bill author’s assertion that given the condition of the victim or the relation between the abuser and the victim in cases of child abuse, elder abuse, and domestic violence, that such victims may be subject to undue influence by the abuser into civil compromise); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 115, at 3 (Apr. 1, 1997) (stating that proponents feared abusers could be coercing their victims into compromising); see also Molly Dickinson Velick, *Mandatory Reporting Statutes: A Necessary Yet Underutilized Response to Elder Abuse*, 3 ELDER L.J. 165, 173-75 (1995) (stating that elder abuse may be underreported because victims may be too ashamed to admit that their loved ones or family members abuse them, because victims may fear reprisals, or because victims are often the ones helping care for the abuser, the victims often fear leaving the abuser without adequate care); *id.* at 175 (stating that families try to stick together both when the victim relies on the abuser for care and when the abuser relies on the victim for care).

34. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 97, at 3 (July 8, 1997).

appears to the abuser that the victim does not have the option to prevent the prosecution from continuing by compromising, then the victim may be shielded from blame and coercive pressure by the abuser to compromise.³⁵

B. Arguments For Not Eliminating Civil Compromise

Opponents of Chapter 243 point out that eliminating civil compromise in domestic violence cases limits the court's options in fashioning a solution appropriate to the particular case.³⁶ Civil compromise is an especially important option in hard to prove cases because without it abuse victims may be left with no remedy at all.³⁷

Eliminating civil compromise in abuse cases is subject to the same criticism laid upon "no-drop" policies that argue such policies are paternalistic.³⁸ Opponents of Chapter 243 contend, for example, that the effect of Chapter 243 would result in a competent adult not being able to compromise a case involving the theft of a small

35. See *Developments in the Law—Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1499, 1540 (1993) [hereinafter *Developments in the Law*] (asserting that "no-drop" policies work best when prosecutors use subpoenas for both cooperative and uncooperative victims because the victim is shielded from blame and the pressure to drop charges when it appears to the abuser that the victim is being compelled to testify).

36. See Fernandez, *supra* note 8, at A8 (reporting Senator Kopp's position which recognized the seriousness of the crime of domestic abuse but who opposed SB 115 as being inconsistent with the principle of judicial discretion, and that he would oppose the bill until convinced that judges were abusing their discretion in approving civil compromises too frequently and unjustifiably). But see ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 97, at 4 (July 8, 1997) (stating that court discretion over civil compromise in domestic violence cases was so abused that SB 115 was passed by the Legislature).

37. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 115, at 3 (Apr. 1, 1997) (stating opposition's objection to SB 115 that civil compromise is best used in cases that would be hard to prosecute); see also Fernandez, *supra* note 8, at A5 (reporting judges' statements at a hearing regarding a proposed resolution of the San Francisco County Board of Supervisors to disapprove use of civil compromise in domestic violence cases as saying that proposal infringes on judicial independence and that a blanket refusal to grant civil compromise would result in more acquittals or outright dismissals); Lucas, *supra* note 12, at A17 (quoting a legislative advocate for the California Public Defenders Association as saying that if compromise is banned victims will receive no remedy when a weak case ends in acquittal and saying that civil compromise is most often used in the least threatening cases).

38. See *Developments in the Law*, *supra* note 35, at 1541 (describing criticism of "no-drop" policies which claim that such policies are paternalistic and erosive of the victim's self-esteem because they take the control over the situation and the decision of whether or not there will be a prosecution away from the victim); see also Corsilles, *supra* note 15, at 876 (suggesting that by denying the victim the ability to make choices for herself and family and to assess the risks herself, "no-drop" policies may further erode self-esteem and attempts at empowerment).

amount of money by a housekeeper.³⁹ A practical effect of taking this discretion away from victims could be that they will be more reluctant to call the police in the first place if they believe that arrest will automatically lead to prosecution.⁴⁰

IV. CONCLUSION

The elimination of civil compromise in domestic abuse cases continues a series of actions designed to strengthen the law regarding domestic abuse.⁴¹ Specifically, Chapter 243 continues a trend in bringing domestic violence cases to formal and public adjudication.⁴² Chapter 243 reinforces the message that domestic violence is not just a private matter, but also a matter of great public concern.⁴³ Though Chapter 243 limits courts' flexibility, the particular danger to victims and society posed by these crimes and the unseen pressure on victims to compromise provides substantial justification for a clear rule limiting the use of civil compromise.

39. See SENATE FLOOR, ANALYSIS OF SB 97, at 4 (Mar. 12, 1997) (stating that given the definition of "caretaker," those that can be prosecuted under § 368 of the Penal Code could include a trusted housekeeper); see also CAL. PENAL CODE § 368(f) (West 1988) (defining "caretaker" as a person with the "care, custody, or control of or who stands in a position of trust with, an elder or dependent adult").

40. See Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1865 (1996) (describing how policies, such as issuing subpoenas, which force the victim into a process over which she has no control, can have the effect of re-victimizing the victim and cause her to be reluctant to call for police protection).

41. See *supra* notes 16-17 (discussing recent changes in California law regarding domestic abuse).

42. See *supra* notes 16-17 (discussing efforts in California to bring domestic abuse cases to formal adjudication).

43. See *supra* note 32 (discussing the importance of treating abuse in the home as a public rather than private matter).

Recent Domestic Violence Legislation: Attempting to End the Abuse

Kimberly Jean Wedding

Code Sections Affected

Penal Code § 1050 (amended).
SB 215 (Alpert); 1997 STAT. Ch. 69
Penal Code § 136.2 (amended).
AB 340 (Alby); 1997 STAT. Ch. 48

I. INTRODUCTION

"I know of no more urgent issue in our society than the reduction of family violence. It is pervasive It goes to the very core of the humanity we wish to preserve."¹

The prevalence of domestic violence in the state of California has prompted the California Legislature to pass legislation aimed at preventing the occurrence of domestic violence and at providing legal remedies to victims in their endeavors to end the abuse.² Examples of such legislation are the Domestic Violence Prevention Act³ and the Law Enforcement Response to Domestic Violence Act.⁴ However, victims, law enforcement, courts, and district attorneys continue to face problems regarding the enforcement of restraining orders and the successful prosecution of

1. Elaine Herscher, *New Local Councils Help Victims of Family Violence; All Counties in California Participating*, S.F. CHRON., June 10, 1995, at A15 (quoting Santa Clara County Juvenile Court Judge Leonard Edwards speaking at the Alameda County Family Violence Council on June 8, 1995).

2. See CAL. FAMILY CODE § 6220 (West 1994) (stating that the purpose of the Domestic Violence Prevention Act is "to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence").

3. 1993 Cal. Legis. Serv. ch. 219, sec. 154, at 1383-90 (West) (enacting the Domestic Violence Prevention Act).

4. 1984 Cal. Stat. ch. 1609, sec. 3, at 1700 (West) (enacting the Law Enforcement Response to Domestic Violence Act).

offenders.⁵ The existence of these problems encouraged the Legislature to enact Chapters 48 and 69.⁶

Chapter 48 declares that a criminal restraining order and its provisions will be given precedence over any conflicting civil restraining order that has been issued for or against the same defendant.⁷ Chapter 69 allows "good cause" for a continuance to be automatically met when the prosecutor requests a continuance in a domestic violence case.⁸ Both Chapters attempt to reduce the prevalence of family violence by eliminating those problems which hinder the enforcement of restraining orders and the successful prosecution of domestic violence cases.

II. LEGAL BACKGROUND

A. Chapter 48

Victims of domestic violence have been provided various methods in which they may be awarded a restraining or protective order by the courts.⁹ However, criminal and civil courts rarely confer with one another when issuing restraining orders.¹⁰ For example, an order filed by a civil court judge in a divorce case may contain restrictions, such as the distance that a defendant must keep from the victim and the children, that will differ from those restrictions in a restraining order issued by a criminal judge hearing a domestic violence case.¹¹ These conflicting restraining orders cause confusion for law enforcement officers who are called upon to enforce

5. See Herscher, *supra* note 1, at A15 (reporting that confusion in the law "is making it difficult for domestic violence victims to get help and in some cases inadvertently contributing to the danger they face"); see also *id.* (noting that civil and criminal courts do not consult one another when issuing restraining or protective orders, which often will conflict with one another); SENATE FLOOR ANALYSIS, ANALYSIS OF AB 340, at 2 (June 16, 1997) (explaining that conflicting orders in domestic violence cases lead to "mistakes, lack of law enforcement, unjust arrest, and violence"),

6. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 215, at 1 (June 24, 1997) (stating that SB 215 "will facilitate the vertical prosecutions of such cases, mandated by spousal abuser prosecution program grants"); ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 340, at 1 (May 7, 1997) (noting that, while the Legislature has offered many forms of protective and restraining orders to domestic violence victims, this bill is needed to clarify the priority of the orders).

7. CAL. PENAL CODE § 136.2(h)(2) (enacted by Chapter 48) (stating that when the defendant is charged with domestic violence crime, "a restraining order or protective order against the defendant issued by the criminal court in that case has precedent over any other outstanding order against the defendant").

8. *Id.* § 1050(g) (amended by Chapter 69).

9. *Id.* § 136.2 (amended by Chapter 48); see CAL. FAM. CODE § 6320 (West 1994) (enjoining specific acts of abuse); see also *id.* § 6321 (West 1994) (excluding a person from a dwelling); *id.* § 6322 (West 1994) (enjoining other specified behavior); CAL. CIV. PROC. CODE § 527.6 (West Supp. 1997) (allowing a person who has suffered harassment to seek a temporary restraining order and an injunction prohibiting harassment).

10. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 340, at 1 (Apr. 1, 1997) (noting that "courts often issue orders and fashion dispositions with little communication with other involved courts and without knowledge of existing court orders"); see also Herscher, *supra* note 1, at A15 (reporting that criminal and civil courts in Alameda County do not discuss orders that they issue which involve the same parties).

11. Herscher, *supra* note 1, at A15.

them because police officers must choose which restraining order to enforce without any guidance.¹² The resulting confusion leaves many victims without protection.¹³

Chapter 48 resolves this confusion by declaring that any restraining or protective order issued by a criminal court hearing a domestic violence case has precedence over any other outstanding court order against the same defendant.¹⁴ Therefore, when police officers are called to a situation where they encounter conflicting civil and criminal restraining orders, Chapter 48 requires them to enforce the criminal order.¹⁵

B. Chapter 69

California law reflects the long standing policy that criminal proceedings be quickly disposed of in order to avoid adverse consequences to the People of California and the accused.¹⁶ Specifically, the Legislature recognizes that continuances in criminal proceedings lead to extended incarceration of defendants and delay victims' interests in the speedy resolution of the cases.¹⁷ Accordingly, California law requires a finding that there be "good cause" before a continuance will be granted.¹⁸ The courts are entitled to consider the availability of witnesses, including peace officers, and any prior commitments on their part when determining whether or not there is sufficient good cause to grant the continuance.¹⁹ In 1987, the Legislature expanded the definition of good cause by designating that cases involving sexual abuse, sexual assault, or child abuse automatically meet the requirement of good cause and shall be granted a continuance when the prosecuting attorney cannot be in court because he or she has another trial, preliminary hearing, or

12. See *id.* (reporting that police officers are often called to the scene of a domestic violence situation and are often unable to make sense of the numerous court orders).

13. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 340, at 1 (Apr. 1, 1997) (stating that restraining orders issued by different courts that differ from one another leave law enforcement in the position of having to choose one over the other); see also Herscher, *supra* note 1, at A15 (quoting psychologist Mary Duryee, who stated that "the police department is supposed to make sense of this stuff when they get a call on Saturday night" and should not leave the victim exposed to further abuse); SENATE FLOOR, ANALYSIS OF AB 340, at 2 (June 16, 1997) (explaining that the conflicting orders "place law enforcement in the field with the position of giving one valid order preference over another").

14. CAL. PENAL CODE § 136.2 (amended by Chapter 48).

15. *Id.*

16. *Id.* § 1050(a) (West 1994); see *Harris v. Municipal Court*, 209 Cal. 55, 61, 285 P. 699, 701 (1930) (reflecting the principle that there is public concern regarding the disposition of criminal cases and that, therefore, it is the duty of the courts and prosecutors to ensure the speedy disposition of those cases).

17. CAL. PENAL CODE § 1050(a) (West 1994).

18. *Id.* § 1050(e) (West 1994).

19. *Id.* § 1050(g) (West 1994) (amended by Chapter 69); see 5 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW *Trial* § 2501 (2d ed. 1989) (discussing that although the statute provides no definition of "good cause," the courts are permitted to consider certain specified factors, such as the "general convenience and prior commitments of all witnesses, including peace officers").

motion being heard in another court.²⁰ Proponents of this legislation argued that when the prosecuting attorney's schedule was not considered by the courts in determining whether or not to grant the continuance, the court would require that another prosecutor handle the case for the absent prosecutor or the case would be re-assigned.²¹ This would require the victim to retell the intimate details of the sexual abuse, assault, or child abuse to the new prosecutor.²² It was the special nature of the crime of sexual abuse and child abuse that prompted the Legislature to provide this designation of automatic good cause.²³

Those who work in the domestic violence prevention field, such as social workers, psychologists, and prosecutors, argue that domestic violence victims should be awarded the same consideration as sexual assault and child abuse victims when prosecutors request continuances.²⁴ Many of the criticisms concern the assignment of new prosecutors to the case when a continuance is not granted.²⁵ They argue that domestic violence victims have similar stories of abuse which, if they are required to tell the story again to a new prosecutor, would entail having to re-live the days, months, or years of abuse they suffered at the hands of their abuser.²⁶ In addition, they claim that the ability to successfully prosecute the offender decreases because a new prosecutor, usually unfamiliar with the case, will be assigned to cover for the absent prosecutor and will have had little time to prepare.²⁷

In response to calls for reform by those in the domestic violence prevention field, the Legislature has struggled with ways to improve the apprehension and prosecution of domestic violence offenders.²⁸ Chapter 69 attempts to facilitate the prosecution of domestic violence offenders by awarding domestic violence cases

20. 1987 Cal. Stat. Ch. 461, sec. 3, at 1700 (West) (amending CAL. PENAL CODE § 1050(g)) (declaring that "good cause" includes, but is not limited to, those cases involving allegations of sexual assault/abuse or child abuse).

21. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 215, at 3 (June 24, 1997) (presenting the arguments of proponents of SB 215, who argue that the reasoning behind the passage of SB 215 is identical to the position held by proponents of the 1987 amendment to Cal. Penal Code § 1050).

22. See *id.* at 2 (describing the experience that many sexual and child abuse victims face when their cases are continually reassigned to new prosecutors).

23. See *id.* (noting that after recognizing the difficulty that many sexual abuse victims face while their cases are proceeding through the criminal justice system, the Legislature enacted Penal Code § 1050(g) which allows a continuance to be granted for good cause when the prosecutor is assigned to a sexual assault/child abuse case).

24. See *id.* at 4 (listing the supporters of SB 215, who favor the same system of granting continuances in domestic violence cases as is currently in use with sexual and child abuse cases).

25. *Id.* at 4.

26. See *id.* at 3 (providing arguments by supporters of SB 215, who contend that without this legislation, victims will "have to tell his or her very personal story again and again," as well as build a rapport with each new prosecutor, which is difficult to do).

27. See *id.* at 2 (stating that "prosecutors stand a greater chance of getting a conviction when vertical prosecution methods are used").

28. See Mary Lynne Vellinga, *Legislature Faces Push for Stronger Domestic Violence Laws*, SACRAMENTO BEE, Mar. 23, 1997, at A25 (providing a summary of the legislation pending in both houses that focuses on preventing and prosecuting domestic violence after the legislature received criticism from advocates for victims of domestic violence).

the same consideration as sexual assault and child abuse cases in the granting of continuances.²⁹ Specifically, it allows the prosecuting attorney's schedule conflicts to constitute sufficient good cause for a continuance when the crime being prosecuted involves a domestic violence offense.³⁰

III. PRACTICALITY OF CHAPTERS 48 AND 69

Chapter 48, which designates that criminal restraining orders have precedence over any conflicting civil orders, reflects a commonly held view that criminal actions take precedence over civil actions.³¹ Criminal cases are commonly awarded precedence over civil cases in the setting of date and time for trial.³² For example, in Quincy, Massachusetts, the courts classify domestic violence cases "as priority over other civil matters."³³ In the Quincy courts, if a domestic violence victim is not able to appear at a special domestic violence restraining order session, the judges will hear the victims as soon as the restraining order request is filed.³⁴ Many times this will occur ahead of other pending cases, civil or criminal, already before the judge.³⁵ Not only does this system provide priority to criminal cases over civil actions, but it also affords a higher preference to criminal actions involving domestic violence.

Chapter 69 furthers the goal of successfully prosecuting domestic violence offenders by ensuring the ability of prosecutors to handle the cases "vertically."³⁶ Vertical prosecution refers to a situation "where one attorney is assigned to a case from beginning to end, to proceed intact."³⁷ Vertical prosecution avoids the use of an "assembly line" method, where different prosecutors are assigned to manage the same case at the various stages of prosecution.³⁸ This leads to prosecutors being

29. See ASSEMBLY PUBLIC SAFETY COMMITTEE, COMMITTEE ANALYSIS OF SB 215, at 2 (June 24, 1997) (stating that SB 215 would grant continuances in domestic violence cases in a manner similar to that already in effect for sexual and child abuse cases).

30. CAL. PENAL CODE § 1050(g) (amended by Chapter 69).

31. See 5 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW *Trial* § 2449 (2d ed. 1989 & Supp. 1997) (discussing the public policy behind requiring the prompt disposition of criminal cases before any civil matters or proceedings).

32. CAL. PENAL CODE § 1050(a) (West 1994).

33. Elena Salzman, Note, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 338 (1994); see *id.* (suggesting that the Quincy Program is very successful because it "rests on three fundamental concepts: integration, communication, and prioritization of domestic violence issues").

34. See *id.* at 342 (describing the procedure set up by the Quincy court system which will "expedite domestic violence hearings," and providing alternatives to the special sessions if needed).

35. *Id.*

36. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 215, at 1 (June 24, 1997).

37. *Id.* at 2.

38. See Ted Appel, *Anti-Gang Prosecution Unit Formed*, U.P.I., Mar. 22, 1988 (reporting how gang-related prosecutions were handled prior to the use of the vertical prosecution strategy); see also Elaine Tassy, *Seeing It Through; Prosecutors To Be Assigned For Duration of Case To Give Abuse Victims Support*, L.A. TIMES, Oct. 21, 1993, at B3 (noting that before vertical prosecution, "domestic violence victims usually had different attorneys

unfamiliar with the progression of the case and leaves victims to explain their story each time a new prosecutor is assigned.³⁹

The concept of vertical prosecution is being used to improve the conviction rate of many crimes, including statutory rape,⁴⁰ narcotics violations,⁴¹ robberies and burglaries,⁴² and gang-related crimes.⁴³ Interestingly, the move towards vertical prosecution is now being applied by the judicial branch in which courts are assigning one judge to handle an entire case from beginning to end.⁴⁴

The use of vertical prosecution has only recently been applied to spousal abuse and domestic violence cases.⁴⁵ However, even with its limited and short use, the Los Angeles County District Attorney is reporting an 88% conviction rate as a result of using the vertical prosecution method.⁴⁶ The Los Angeles County District Attorney contends that Chapter 69 will further its ability to ensure vertical prosecution in domestic violence cases because it allows the courts to consider the prosecutor's

for the various stages of the judicial process—filing, preliminary hearings, and prosecution”).

39. See Tassy, *supra* note 38, at B3 (stating that “victims . . . end up sitting in courtrooms with prosecutors who had just been handed this case five minutes beforehand,” and that the use of vertical prosecution will allow one attorney to become particularly familiar with the victim's case).

40. See Tony Perry, *Getting Tough On Teenage Pregnancies; Laws: With the Failure of Education and Counseling Programs, Governor Boosts Prosecution of Men Who Have Sex With Underage Girls*, L.A. TIMES, Jan. 7, 1996, at A3 (reporting that California Governor Pete Wilson began a new program which uses vertical prosecution to improve the “enforcement of laws against men having sex with underage girls”).

41. See Dwayne Bray, *Prosecutors Also Target Small-Time Meth Dealers; Crime: Authorities Cite Alarming Rise In Use of the Drug and Seek Approval to Earmark Block Grant Funds to Combat the Increase*, L.A. TIMES, June 27, 1995, at B1 (stating that local governments are planning to target “the lowest level dealers of the drug with high-priority prosecutions” implementing the vertical prosecution concept for methamphetamine dealers).

42. See Tom Ragan, *Community News Focus: Countywide; D.A. Seeks \$280,000 to Aid Prosecutions*, L.A. TIMES, June 1, 1995, at B2 (describing an application filed by the Orange County District Attorney requesting funds to create a new vertical prosecution unit, consisting of two assistant district attorneys and one investigator, to track and prosecute robbery and burglary suspects).

43. See Jerry Hicks, *Prosecutor Brings Experience to Gang Detail; Crime: Brent V. Romney Heads the D.A.'s Gang Unit After Having Specialized in Such Cases—Considered the Toughest in the Office*, L.A. TIMES, May 20, 1990, at B6 (reporting that the vertical prosecution concept is an important tool in reducing gang-related violence in the city).

44. See Grace Karpa, *Officials Give Nod To Revamp of Courts*, SACRAMENTO BEE, Oct. 6, 1996, at N1 (observing that Placer County courts will be adopting a vertical prosecution strategy in hopes of improving the court system and the speedy resolution of cases).

45. See Pamela M. Macktaz, *Domestic Violence: A View From the Bench*, 69 MD. J. CONTEMP. LEGAL ISSUES 37, 42 (1995) (noting that “the concept of vertical prosecution is one of the new responses to domestic violence”); see also Jean Merl, *Spousal Abuse Prosecution Unit To Be Expanded; Law: The Same Staff Members Who File Charges Will Now Be Able To See Case Through To Resolution*, City Attorney Says, *Increasing the Likelihood of Convictions; He Names a Top Deputy To Head the Effort*, L.A. TIMES, Oct. 13, 1995, at B1 (reporting that a new domestic violence prosecution team formed in the District Attorney's Office will adopt the use of a vertical prosecution strategy to improve the rate of domestic violence convictions).

46. See Donna Wills, *Symposium: Mandatory Prosecution in Domestic Violence Cases: Domestic Violence: The Case For Aggressive Prosecution*, 7 UCLA WOMEN'S L.J. 173, 180 n.28 (1997) (stating the success that the Los Angeles County District Attorney has had in prosecuting domestic violence cases since using vertical prosecution).

calendar, which is often consumed with other domestic violence cases, on a motion for a continuance.⁴⁷

However, opponents to Chapter 69 argue that a continuance should be granted on a case-by-case basis, not because of the crime charged or the prosecutor's calendar conflicts.⁴⁸ In addition, opponents contend that vertical prosecution often disrupts the courts because of the many scheduling conflicts, and they advocate the assignment of one prosecutor per courtroom.⁴⁹ However, proponents argue that the benefits of vertical prosecution are numerous and that its use is necessary to further the legislative policy of treating domestic violence victims with "fairness and sensitivity."⁵⁰

IV. CONCLUSION

Chapters 48 and 69 will enable the criminal justice system to treat victims of domestic violence with the fairness and sensitivity advocated by the California Legislature. By ensuring the protection of victims through the enforcement of criminal restraining orders over any conflicting civil order⁵¹ and encouraging the victims' cooperation in courts by supporting the use of the vertical prosecution through the granting of automatic good cause in domestic violence cases,⁵² perhaps these laws will effectuate a reduction in the instances of family violence long awaited by victims.

47. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 215, at 3 (June 24, 1997) (noting that the change that Chapter 69 effectuates will enable the prosecutor to ensure that the case will be handled vertically and "would give prosecutors another tool to help break the cycle of violence in California").

48. See *id.* (reflecting the position of Chapter 69 opponents, the California Attorneys for Criminal Justice, who argue that the judge must consider other interests when deciding to grant a motion for a continuance, such as whether or not the defendant is in custody).

49. See John C. Kuehner, *Prosecutor, Foe Sharply Different*, THE PLAIN DEALER, Oct. 7, 1996, at 1B (reporting comments made by a candidate for district attorney who disagrees with the use of vertical prosecution, except in drug and sex offense cases, because the prosecutor disrupts the court with his or her scheduling conflicts because of cases in other courtrooms).

50. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 215, at 3 (June 24, 1997) (observing that vertical prosecution has "resulted in higher conviction rates, victims who are more involved and satisfied with the results of the trial, and a more efficient use of scarce resources").

51. See *supra* Part II (discussing that Chapter 49 will better enable police officers to protect violence victims because they will know which one of the many restraining or protective orders should be enforced).

52. See *supra* Part III (addressing the importance of vertical prosecution in attaining convictions and finding that a court's consideration of a prosecutor's time schedule when deciding whether to grant a continuance will encourage the use of vertical prosecution).