



2004-2005 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

WEEDING OUT INELIGIBLE WELFARE RECIPIENTS

Summary

In June 2004, the 2003-2004 Santa Clara County Civil Grand Jury issued a report that recommended an early fraud detection program similar to the P-100 program used successfully in San Diego. Currently the Santa Clara County (County) welfare programs are administered by the Social Services Agency (SSA). However, the recommendation was neither accepted nor implemented by SSA.

The 2004-2005 Santa Clara County Civil Grand Jury (Grand Jury) felt the issues raised in the previous report were important to the community and that a new inquiry with updated information might provide improved solutions. Like its predecessor, the current Grand Jury has found that SSA is not aggressive in identifying or reporting potential fraud suspects among individuals applying for or receiving assistance. The Grand Jury concluded its inquiry with the following recommendations:

- The Santa Clara County Board of Supervisors (BOS) should direct SSA to make available to the Special Investigative Unit (SIU) of the County Office of the District Attorney (ODA) all pertinent information regarding welfare applicants who have been accepted by SSA and are in the process of receiving benefits and/or assistance.
- The Santa Clara County Board of Supervisors should direct SSA to develop a memorandum of understanding with ODA that would establish: (1) a protocol designed to comply with legal requirements for in-home visits to be conducted unobtrusively at the discretion of SIU investigators *after* eligibility has been decided and assistance begun by SSA; and (2) an allocation to SIU of a standardized amount (such as 1%) of SSA's annual budget to assure appropriate funding for the operations of SIU.

Background

SOCIAL SERVICES AGENCY

The SSA employs more than 2,500 people, with an annual budget of more than \$500 million. The BOS annually approves the SSA budget, even though many of the funds for SSA appropriations are passed through from the State of California for state and federally mandated programs. In recent years of public funding deficits, all agencies, including SSA, have been required to cut budgets (see Appendix A). A variety of welfare programs are administered by SSA, which has three divisions:

- Department of Family and Children's Services;
- Department of Employment and Benefit Services; and
- Department of Aging and Adult Services.

The two major program categories administered by SSA, namely CalWORKs and Food Stamps, are tracked by the California State Department of Social Services (CDSS), which collects and reports data on these programs on a regular basis. Other categories of welfare assistance include childcare, medical, housing and in-home care.

The federal program for Aid to Families with Dependent Children (AFDC), which was changed to Temporary Assistance for Needy Families (TANF) in 1997, was incorporated with other programs into the California Work Opportunity and Responsibility to Kids Act (CalWORKs) on January 1, 1998.

WELFARE FRAUD INVESTIGATIONS

Various sections of the California Welfare and Institutions Code require CDSS to maintain uniformity in public social service programs. As a result of CDSS regulations and its manual of policies and procedures, each county is obligated to establish a Special Investigative Unit for fraud prevention and detection, separate from units performing eligibility and grant functions (see Appendix B). According to CDSS policy, the County has the discretion to place SIU in either the county welfare department (SSA) or a law enforcement agency (ODA or Sheriff's Office). In 1993, the investigation of welfare fraud in the County was transferred from SSA to ODA.

Each of California's 58 counties can decide where to assign responsibility for its SIU. The CDSS Fraud Investigation Report for July – September 2004 shows where those SIUs are located: county welfare departments (26) district attorney's offices (21); a cooperative between welfare departments and district attorney's offices (9); and sheriff's offices (2) (see Appendix C).

In Santa Clara County, the funding for these investigators and the identification of the subjects for investigation are still controlled by SSA. SSA reduced the funding for SIU investigators from \$6.3 million in FY 2003 to \$4.4 million in FY 2004. The SIU budget for FY 2005 was \$4.5 million. The ODA states that until SSA specifically refers a case to SIU, or an external source identifies a fraud suspect, SIU investigators have no information or basis on which to conduct an investigation.

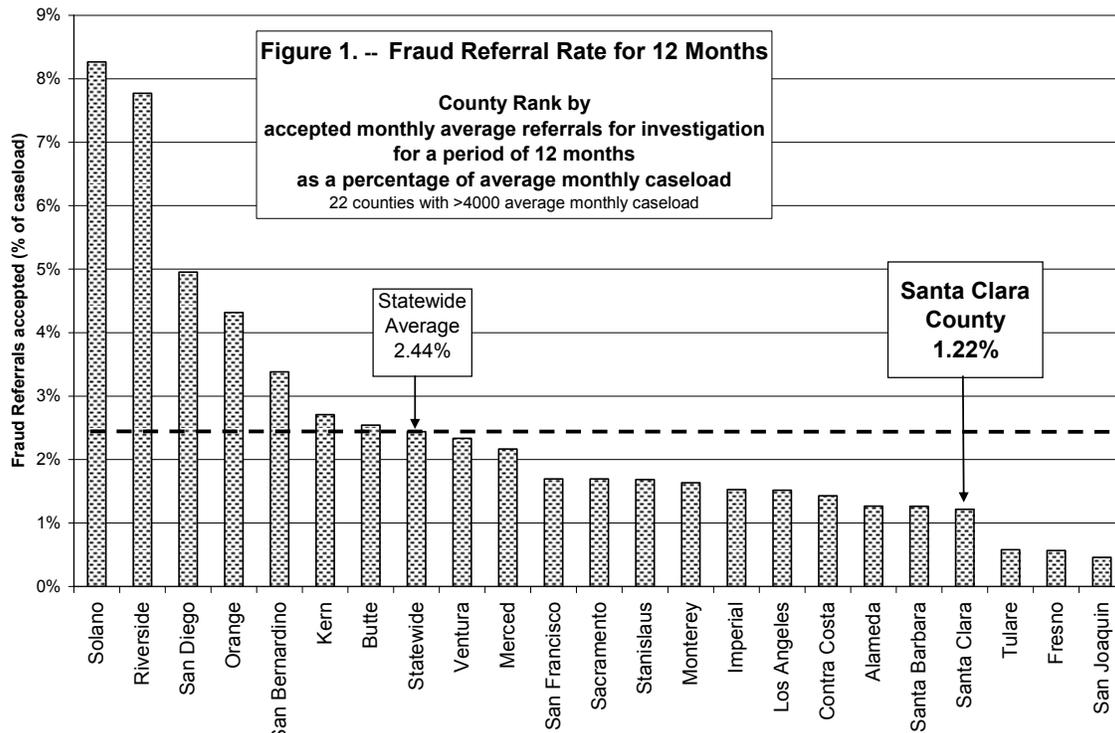
CDSS also performs a federally mandated function to collect and compile statistics on fraud incidents in various federal programs. To this end, CDSS publishes monthly summaries and quarterly summaries of fraud investigations by each of the 58 counties in California. The most recently issued monthly summary was for January 2005, and the most recent quarterly summary was for July – September 2004.

The Grand Jury has combined selected columns of data from the last four quarterly reports into a single table from October 2003 through September 2004, as shown in Appendix D. The data selected for this 12-month compilation included the following columns for all counties:

1. CalWORKs Caseload – average number of cases per month;

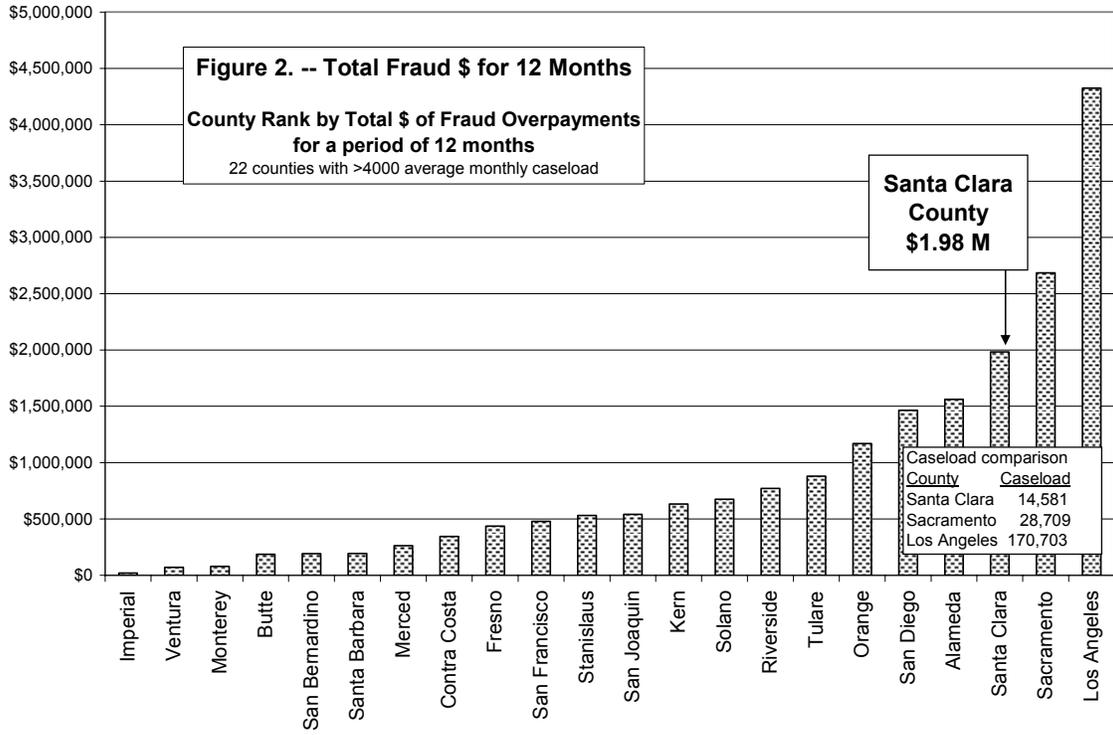
2. Investigation Requests Accepted – total number of cases;
3. Sufficient Evidence to Support Fraud Allegation – total number of cases; and
4. Fraud Overpayments Identified – total for 12 months.

These data are for the CalWORKs program only. Fraud data were also collected by CDSS for programs other than CalWORKs, but are not included here. In addition, some ratios of these columns were calculated for making comparisons of county activity in these areas and are also tabulated in Appendix D. These data were made comparable by limiting them to the 22 counties in California having greater than 4,000 average cases per month. These data were sorted by various columns for showing graphically how Santa Clara County compares by rank with the other large caseload counties in California. The first comparison of these fraud figures is shown in Figure 1. These data show that Santa Clara County, with a referral rate of 1.22%, has a rate one-half the statewide average of 2.44%, and the fourth lowest of the 22 counties in referring CalWORKs cases for fraud investigation.



Source: CDSS Quarterly Fraud Summary Reports Oct-Dec03, Jan-Mar04, Apr-Jun04, Jul-Sep04.

With a very low referral rate for fraud investigation, one might expect very little fraud to be found. To evaluate this hypothesis, the Grand Jury used CDSS data to rank counties by the total dollars identified as fraud overpayments in the same 12-month period for the same 22 counties. These data are shown in Figure 2. The ranking of counties in this figure shows that Santa Clara County is the third highest in all fraud dollars overpaid, being less than only Sacramento County and Los Angeles County. But Sacramento County has twice the average caseload and Los Angeles County has nearly 12 times the caseload of Santa Clara County.

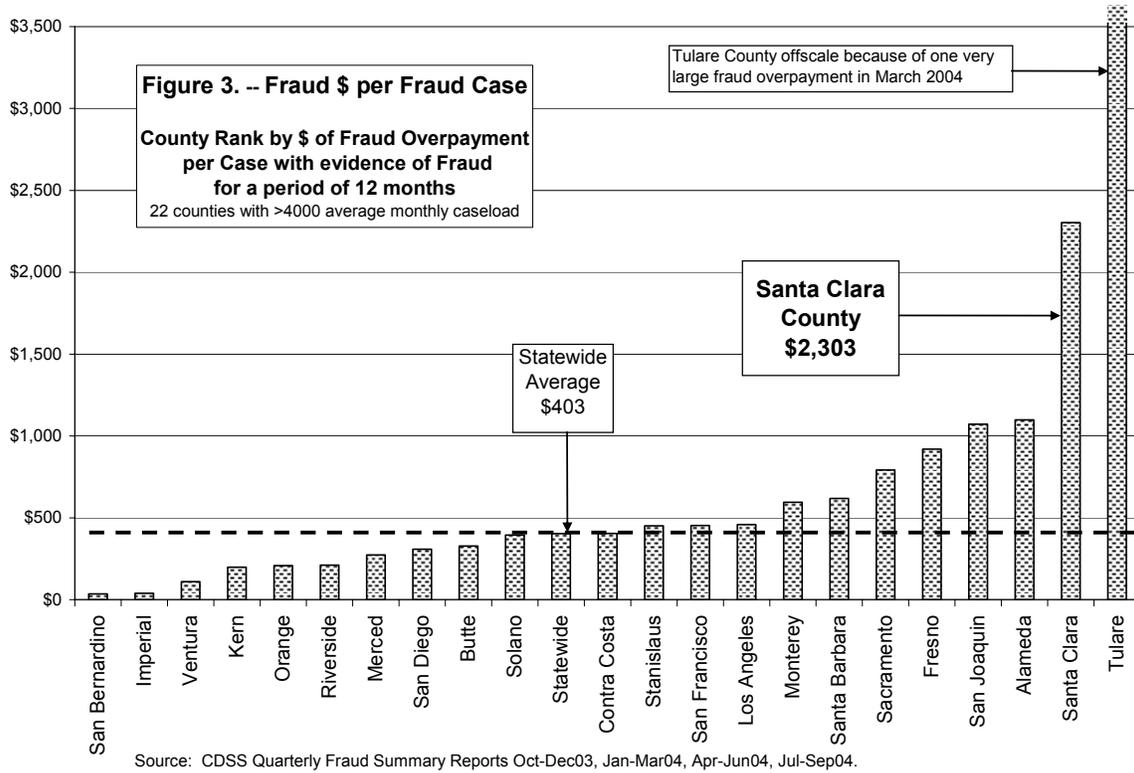


Source: CDSS Quarterly Fraud Summary Reports Oct-Dec03, Jan-Mar04, Apr-Jun04, Jul-Sep04.

A more meaningful comparison would take the caseload into account. In Figure 3, the 22 counties are ranked by the total dollars identified as fraudulently overpaid in a 12-month period divided by the number of SIU-investigated cases where sufficient evidence of fraud had been found. Some investigations finding fraud may have been initiated prior to the 12-month period, and some initiated during the period would not have been completed. The use of a 12-month period should minimize the effect that fraud investigations and the dollars identified as overpaid are somewhat out of phase in time.

The comparison of Santa Clara County with other California counties in Figure 1 showed that SSA has one of the lowest fraud referral rates of all 22 counties with average caseloads of more than 4,000 CalWORKs cases. If this were due to a lower incidence of fraud and not to a lower reporting of fraud, then the dollars of fraud identified should also be lower. However, the last two Figures show just the opposite. Santa Clara County has by any metric one of the highest dollar amounts of identified fraud in the state. In total dollars for 12 months, only Sacramento County and Los Angeles County surpass Santa Clara County. However, as noted previously, Sacramento County has twice the caseload and Los Angeles County has 12 times the caseload. Furthermore, the ratio of the identified fraud dollars to the number of referred cases where fraud allegations have sufficient evidence shows Santa Clara County very near the highest ratio. In Figure 3, only Tulare County exceeded Santa Clara County, and if its one-time high fraud identification of \$350,000 reported in March 2004 were not included, its metric would be only slightly larger than that of Santa Clara County.

Other information in the CDSS quarterly summary of welfare fraud investigations includes amounts that were subsequently recovered from ineligible recipients. From these reports it appears that many of the overpaid funds for the CalWORKs program are recovered, while there is less recovery of overpaid funds in the Food Stamp program.



The ODA also analyzes a richer set of data representing County cases it is permitted to investigate. A summary of some selected fraud referrals to SIU for investigation is shown in Table 1.

TABLE 1. WELFARE FRAUD CASE SUMMARY FOR SANTA CLARA COUNTY

Sums in thousands of dollars

	Cases Issued	Cash Aid	Food Stamps	General Assistance	Housing	EBT*	Child Care
2002	157	1031.8	416.7	1.2	261.4	20.2	54.5
2003	151	566.4	280.5	0	442.0	5.1	131.1
2004	107	653.4	307.3	0	298.4	0	49.4

* EBT = Electronic Benefit Transfer

These data show the diversity of case types handled by SIU. The CalWORKs fraud cases appear in the column "Cash Aid" which ODA had previously titled "AFDC". Only CalWORKs fraud data have been compared in the above Figures 1-3 and are the largest single component of the investigated cases summarized in this table. In reporting this

information, SIU also confirmed that there was a reluctance or a lack of aggressiveness in the reporting of fraud cases for investigation. SSA and the separate Department of Child Support Services are the primary sources for fraud referrals to ODA. An analysis by ODA concluded that: "...it is almost fair to say that the general practice is for each [social welfare] worker to make one referral per year."

The costs of criminal court proceedings deter ODA from pursuing fraud cases for amounts of less than \$2,000. On the other hand, large amounts of fraud in high profile cases are pursued and get media coverage. On February 27, 2004, ODA announced the conviction of two individuals in a \$192,000 welfare and housing fraud scam conducted over a period of ten years. On April 22, 2004, ODA announced that two other individuals were charged with a welfare, child care and housing assistance scam that netted the pair more than \$176,000 over 13 years.

P-100 PROGRAM

The "Project 100%" (P-100) program was initiated in San Diego County in 1992, and has been successful in carrying out in-home verification visits to welfare applicants prior to their approval for benefits. Current San Diego County investigators are very positive in their description of the application of that program and its results.

Los Angeles County implemented a pilot P-100 home visitation project in 1999 as described in the following account:

"In February 1999, following a television broadcast about welfare fraud in Los Angeles County, the board of supervisors instructed the Director of the Los Angeles County Department of Public Social Services (DPSS) to report on the feasibility of implementing a home call visitation program. The program was for the dual purposes of eliminating welfare fraud and identifying additional services that can help with family needs. After DPSS reported that such a project was feasible, in April 1999, the board of supervisors voted to implement a program of home visits on a pilot basis. The minutes of the meeting show that the supervisors intended that a successful program in San Diego County be used as the model.

"The 1998-1999 Los Angeles County Grand Jury issued a report on welfare fraud. It examined Project 100 in San Diego County, which employed field calls to the residence of every applicant as a method to verify eligibility. Based on that examination, the grand jury recommended that the board of supervisors direct DPSS 'to implement a pilot project in one District office, based on San Diego's Project 100 in order to step up identification of applicants providing false information and deny aid before benefits are issued. After a six-month trial, report back to the Board of Supervisors with the results of the pilot project.'

"On September 15, 1999, DPSS implemented its home call visitation program in four district offices covering the five supervisorial districts. The program was developed jointly by the district attorney's office and DPSS, and was approved by county counsel and the chief administrative office. The program called for home visits to all potentially eligible CalWORKs applicants. The

purpose of the home visits was 'to complete the eligibility determination process by verifying information provided by all new applicants prior to granting CalWORKs benefits, as well as to assess and discuss the family's need for supportive services, child care, training/education services, literacy training needs, and expedite the family's access to these services as appropriate'" [104 Cal.App.4th 1104, at 1110]

A legal challenge to this in-home visit program on the grounds that it violated constitutional rights and due process requirements was resolved in favor of the legality of such visits. [See *Smith v. Board of Supervisors*, 104 Cal.App.4th 1104 (2002), described in the section entitled, "Litigation Over In-home Visits".] The Los Angeles County implementation of this program is called the Home Interview Program (HIP), and has been working successfully.

In June 2004, the 2003-2004 Santa Clara County Civil Grand Jury issued a report entitled "Inquiry into Early Detection of Welfare Fraud". That report recommended that a pilot program modeled after the San Diego County P-100 program should be implemented in Santa Clara County to assist in the early detection of fraud in the welfare system. The report relied on data from the CDSS Fraud Investigation Report for January – March 2003. The fraud referral rates for similar counties were compared and savings were projected based on that data. The recommendation in that report was rejected by SSA, which disputed the statistics presented in the report and the benefits to be derived. SSA also argued that the home visits required by the P-100 early fraud detection program were intimidating to their clients, were intrusive and violated the rights of the applicants.

The P-100 program has recently captured legislative interest. California Senate Bill 786, introduced by State Senator McClintock on February 22, 2005, states that: "It is therefore the intent of the Legislature to establish a statewide version of the 'Project 100%' plan to prevent fraud and abuse of government assistance programs." (see Appendix E) This bill would require the district attorney's office in an applicant's county of residence, within ten days of the applicant's preliminary approval for aid, to arrange for an authorized investigator to conduct a home call, consisting of a brief interview with the applicant and walkthrough of the applicant's residence. The bill would require the district attorney's office to report its findings to the appropriate county officials prior to final approval of aid for the applicant.

For a hearing on April 12, 2005, the staff analysis for the State Senate Human Services Committee, chaired by California State Senator Simitian, stated the following:

"In a landmark case on this subject, *Benny Max Parrish v. The Civil Service Commission of the County of Alameda* (425 P.2d 223 --Cal. 1997) [Actual case date is 1967], the California Supreme Court ruled against the practice envisioned in this bill: namely, they ruled against the constitutionality of targeting home visits for those welfare applicants not suspected of fraud. In that case the court went so far as to argue that the unequal nature of the power held by those consenting to a home visit and those asking for access is such that consent to a legal search cannot be obtained.

"The similarities between the circumstances in the Parrish case and this proposal are that the homes identified for visits are not under suspicion of

welfare fraud, that refusal to allow entry does cause the welfare case to trigger to a sanction, denial, penalty, etc. In fact, in the protocol envisioned in SB 786 requires law enforcement officials (in this case District Attorney Office investigators), not welfare department social workers, to conduct these interviews – a fact which even more profoundly affects the ability of any welfare applicant to exercise their constitutional right to refuse to participate.

“The impact of the questions raised from the Parrish case still influences state welfare policy, notwithstanding the fact that there have been additional welfare reforms since the Nixon era. The current regulations of the California Department of Social Services prohibit ‘mass or indiscriminate home visits’ by fraud investigators. In this case, these are applicants by design NOT suspected of fraud.”

LITIGATION OVER IN-HOME VISITS

In the litigation over in-home visits for welfare applicants, three landmark cases deserve detailed description.

1. *Parrish v. Civil Service Commission*, 66 Cal.2d 260 (1967)

An Alameda County social worker, Benny Max Parrish, was discharged for “insubordination” when he declined to participate in a mass morning raid upon the homes of welfare recipients. The trial court rejected his suit for reinstatement with back pay, but the California Supreme Court reversed that judgment on the grounds that such mass unannounced raids were unconstitutional, and that the social worker could not be discharged for refusing to participate in that activity. But the Parrish court also noted:

“We fully recognize the importance of ferreting out fraud in the inexcusable garnering of welfare benefits not truly deserved. Such efforts, however, must be, and clearly can be, conducted with due regard for the constitutional rights of welfare recipients. The county welfare department itself has now abandoned the technique of investigation which it pursued here; we may thus rest assured that it will develop other more carefully conceived procedures.”

2. *Wyman v. James*, 400 U.S. 309 (1971)

A New York City welfare recipient, Barbara James, was receiving benefits from the AFDC program. When she refused to permit a scheduled home visit, her benefits were terminated after due warning. The Southern District Court of New York reinstated her benefits on the grounds that a home visit without a warrant based on probable cause violated her constitutional rights. However, the U. S. Supreme Court reversed that judgment and noted:

“Our holding today does not mean, of course, that a termination of benefits upon refusal of a home visit is to be upheld against constitutional challenge under all conceivable circumstances. The early morning mass raid upon homes of welfare recipients is not unknown. See *Parrish v. Civil Service Comm'n*, 66 Cal. 2d 260, 425 P.2d 223 (1967); Reich, *Midnight Welfare Searches and the Social Security Act*, 72 Yale L. J. 1347 (1963). But that is not this case. Facts of that kind present another case for another day.

We therefore conclude that the home visitation as structured by the New York statutes and regulations is a reasonable administrative tool; that it serves a valid and proper administrative purpose for the dispensation of the AFDC program; that it is not an unwarranted invasion of personal privacy; and that it violates no right guaranteed by the Fourth Amendment.”

3. *Smith v. Board of Supervisors, 104 Cal.App.4th 1104 (2002)*

Appellants Debra Smith, et al. sued the Los Angeles Board of Supervisors, et al. for an injunction challenging a home call visitation pilot project. The background behind the pilot project was described above in the P-100 Section of this report. The Second District Court of Appeals upheld the trial court ruling for the county, and noted also that:

“The trial court distinguished *Parrish v. Civil Service Commission (1967) 66 Cal.2d 260 [57 Cal.Rptr. 623, 425 P.2d 223]*, a case that disapproved early morning entries into the homes of welfare recipients by Alameda County personnel. The entries were made for the purpose of discovering unauthorized males. The court found the program violated the Fourth Amendment. The court concluded that the precedential value of *Parrish* is doubtful in light of the later Supreme Court decision in *Wyman v. James*. Petitioners' claim that the home visit program violates the California constitutional right to privacy also was rejected.”

Appellants' petition for review by the California Supreme Court was denied April 23, 2003.

In addition to these published cases, which appear to decide the dispute over the legality of in-home visits, there is a case pending in federal court. Case No. 00CV1467JM, *Rocio Sanchez, et al. v. County of San Diego*, was filed in the U.S. District Court, Southern District of California, in 2000, and was based on the federal regulations governing the U.S. Department of Agriculture (USDA) Food Stamp program. The American Civil Liberties Union of San Diego and Imperial Counties (ACLU) represents plaintiffs who have appealed a summary judgment against them to the U. S. Court of Appeals for the Ninth Circuit. In that appeal, 04-55122, filed 21 July 2004, both sides have filed briefs, and the case is waiting for a setting of date and time for hearing.

DISINCENTIVES TO REPORTING FRAUD

There is a polarization of opinions and attitudes into two different camps regarding welfare. This dichotomy of opinions has become apparent in the public debate over welfare. One group views welfare as a "right", and there are numerous welfare rights organizations supporting this view. Opposing viewpoints emphasize the "responsibility" of the recipients. This latter view has been most actively pursued in what is best described as "Workfare" as opposed to "Welfare". The recipient in a Workfare program is expected to take instruction in job related skills, to seek employment, and is only permitted to remain on welfare assistance for a limited number of years. This concept is fairly widely debated in United Kingdom and European communities where the term Workfare is commonly used. In the U.S., this concept was implemented in the TANF program administered by the USDA. The intent of these programs, which change the manner in which welfare

assistance is dispensed, has been to eliminate the "professional" recipient who stays on welfare for life.

In this debate, some argue that the social welfare workers are in the same "camp" as the recipients in their caseloads, making these caseworkers less objective in reporting fraud. The statutory separation of SIUs from the eligibility and dispensing functions of welfare units gives credence to this view. The sociological literature further supports this view. The following observations were made by Ronald Paul Hill and Sandi Macan in their article "Welfare Reform in the United States: Resulting Consumption Behaviors, Health and Nutrition Outcomes, and Public Policy Solutions", which appeared in *Human Rights Quarterly* 18.1 142-159 (1996):

"Like the welfare recipients, case workers also face disincentives to pursue fraud. For example, case workers recognize that welfare income is insufficient to support a family and, therefore, are reluctant to eliminate or reduce aid 'because of the real needs they know these clients have.' Also, case workers typically handle hundreds of welfare recipients and have little time to examine or to investigate each case. Even when fraud is obvious, the paperwork and official processes are lengthy and supervisors discourage the pursuit of all but the most iron-clad cases. Finally, case workers see little to be gained from the investigation of fraud because most recipients who are found guilty of fraud remain on welfare, with only a reduction in benefits to 'reimburse' the state. (ibid. p. 153)"

Discussion

As noted previously, California state regulations require each county to establish special investigative units for the purpose of investigating suspected welfare fraud. Santa Clara County has created a Special Investigation Unit in the Office of the District Attorney, but has left the funding for that SIU under the control of Social Services Agency. In addition, SIU does not have access to welfare recipient information unless and until SSA or an outside source refers a suspected fraud case for investigation. Thus, SIU, which by State regulation should be a separate organization "independent of organizations performing eligibility and benefit determination functions", is in fact restricted by SSA control of funding and selection of fraud referrals.

The view of Hill and Macan is that social welfare workers are "soft" in determining eligibility. A more aggressive approach by district attorney's investigators would uncover undeserving applicants who are inclined to exaggerate their needs or to be less than completely honest about their situations. Many social welfare workers are concerned that a more aggressive approach, including in-home verification visits, would intimidate clients and discourage needy people from applying. Whether one classifies deception on an application as exaggeration, dishonesty, or fraud depends on the classifier as well as on the deceiver. Most applicants who embellish their situation to gain additional monetary support do not consider it fraud. But it may well be fraud in the eyes of the law.

Another factor supporting the contention that social welfare workers are not fully objective screeners of eligibility is found in the statistics of fraud reports to ODA. In Santa Clara County, SIU investigators only obtain information on a welfare recipient when they

receive a report from SSA or some external source indicating that fraud is suspected. Information on such reports obtained from ODA shows that some individuals and departments within SSA rarely report more than a single suspicion of fraud in areas of assistance known in other locales to be fraught with abuse. Certainly, the statistics compiled in Appendix D and displayed in Figure 1 show that the social welfare workers in Santa Clara County refer far fewer cases for fraud investigation than are referred in other counties. It is reasonable to infer that the very low referral rate in the County is a result of social welfare worker reluctance to report potential fraud, because the statistics on fraudulent overpayments displayed in Figures 2 and 3 show there is much more than an average fraud overpayment once investigated. Some change is necessary to uncover fraud at an earlier stage.

It is clear from the paper by Hill and Macan that the social welfare workers in SSA may not be in a position to be fully objective in the determination of eligibility for welfare assistance. In these days of slashed budgets and governmental deficits, any allocation of funds to ineligible applicants is, in essence, a denial of those funds to a truly needy person or purpose. Thus, our system for providing welfare should take reasonable steps to assure that the eligibility for welfare assistance is not abused.

In light of the litigation summarized above and the staff analysis for SB 786, there is still substantial disagreement about using a P-100 approach to determine welfare eligibility. *Parrish v. Civil Service Commission*, the only case cited in the SB 786 staff analysis, was actually decided in 1967 and not in 1997 as indicated in that analysis. *Smith v. Board of Supervisors* is the most recent case to be decided on the subject. *Smith* was decided 35 years after *Parrish*, is based on different facts, and review by the California Supreme Court has been denied. The decision in *Smith* holds that properly tailored in-home visits can meet the necessary legal requirements. However, there is clearly reluctance by SSA management and the social welfare workers to accept the decision in *Smith*. The ACLU appeal in the *Sanchez* federal suit indicates that social welfare advocates are not willing to drop their challenge to the legality of in-home visits.

SSA rejected the 2003-2004 Civil Grand Jury recommendation to implement a pilot P-100 program. SSA's rejection cited both the *Sanchez* federal case, and selected statistics from CDSS showing that SIU had favorable results in pursuing its fraud investigations. Considering the very limited number of referrals, it is not surprising that the results would have been favorable. Even so, SSA would likely respond with a similar rejection if this Grand Jury were to recommend a similar modification to their eligibility evaluations. Thus, this Grand Jury concludes that a different approach may make clearly needed change more feasible.

The dichotomy of attitudes regarding welfare rights and responsibilities has unfortunately been carried into the County organizational structure that administers its welfare programs. The funding for, and identification of, potential fraud cases is controlled by SSA, which determines eligibility and distribution. However, the responsibility and accountability for fraud investigation resides in a separate County organization, ODA. The ODA has no control over the funding for, or identification of, the fraud investigations for which it is accountable. This disconnect between the responsibility of an organization and its ability to control its assets is a dysfunctional management structure requiring immediate attention by BOS.

Conclusion

The Grand Jury recommends that selective in-home visits be established *after* SSA has decided eligibility and begun assistance. These visits should be conducted unobtrusively at the discretion of SIU investigators, following an agreed upon protocol established to comply with legal requirements. This approach has two benefits. First, SSA would still determine eligibility, using the same criteria as it has in the past. Second, if there are any situations uncovered by the subsequent in-home verification visits which would disallow the assistance already granted, there can be no argument that this additional evaluation has weeded out ineligible recipients and saved the money for other deserving people or programs. The essential step in the process envisioned in this recommendation is that SIU investigators should be given access to the necessary information on *all* recipients as soon as eligibility is decided and support payments have begun. Included in this change of procedure would be the understanding that ODA would have the authority to conduct unobtrusive in-home verification visits at its discretion. It would seem apparent that not all recipients would require an in-home visit. The ODA could choose the most likely cases for abuse, based on criteria selected by ODA, and visit only those recipients. The monetary savings resulting from implementation of this recommendation would be immediate and calculable, and not subject to conjecture.

Finding 1

The Social Services Agency is not aggressive in pursuing fraud. The County ranks among the lowest counties in pursuing fraud and among the highest in fraud dollar overpayments. SSA caseworkers lack incentive to deny benefits to welfare applicants, and are less aggressive than their statewide counterparts in referring cases for fraud investigation. The authority and accountability for investigating welfare recipient dishonesty reside in the Special Investigative Unit of the Office of the District Attorney, while the funding for and direction for the fraud investigation activities reside in the organizationally separate SSA. Properly tailored in-home visits for welfare applicants have survived recent legal challenges to their constitutionality.

Recommendation 1A

The Santa Clara County Board of Supervisors should direct the Social Services Agency to make available to the Special Investigative Unit all pertinent information regarding welfare applicants who have been accepted by SSA and are in the process of receiving benefits and/or assistance.

Recommendation 1B

The Santa Clara County Board of Supervisors should direct the Social Services Agency to develop a memorandum of understanding with the Office of the District Attorney that would establish: (1) a protocol designed to comply with legal requirements for in-home

visits to be conducted unobtrusively at the discretion of SIU investigators *after* eligibility has been decided and assistance begun by SSA; and (2) an allocation to SIU of a standardized amount (such as 1%) of SSA's annual budget to assure appropriate funding for the operations of SIU.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 26th day of May 2005.

Michael A. Smith
Foreperson

References

Documents

1. 2003-2004 Santa Clara County Civil Grand Jury report entitled "Inquiry into Early Detection of Welfare Fraud", June 2004.
2. *Parrish v. Civil Service Commission*, 66 Cal.2d 260 (1967)
3. *Wyman v. James*, 400 U.S. 309 (1971)
4. *Smith v. Board of Supervisors*, 104 Cal.App.4th 1104 (2002)
5. *Rocio Sanchez, et al. v. County of San Diego, et al.*, Case No. 00CV1467JM, U.S. District Court, Southern District of California. Appeal No. 04-55122, U. S. Court of Appeals for the Ninth Circuit.
6. Hill, R. P. and Macan, S., "Welfare Reform in the United States: Resulting Consumption Behaviors, Health and Nutrition Outcomes, and Public Policy Solutions", *Human Rights Quarterly* 18.1 142-159 (1996).
7. California Department of Social Services Reports:
 - a) Fraud Investigation Report, October – December 2003
 - b) Fraud Investigation Report, January – March 2004
 - c) Fraud Investigation Report, April – June 2004
 - d) Fraud Investigation Report, July – September 2004

Interviews

1. Deputy District Attorney and Assistant Chief of Investigations, Santa Clara County Unit, 11 Jan. 2005
2. Director of Social Services, Santa Clara County 12 Jan. 2005
3. District Attorney, Santa Clara County 20 Jan. 2005
4. Supervisor (District 1) and Chief of Staff, Santa Clara County 31 Jan. 2005
5. Supervisor (District 5) and Policy Analyst, Santa Clara County 18 Mar. 2005
6. Supervisor (District 3) and Chief of Staff, Santa Clara County 23 Mar. 2005

Telephone Conference Calls

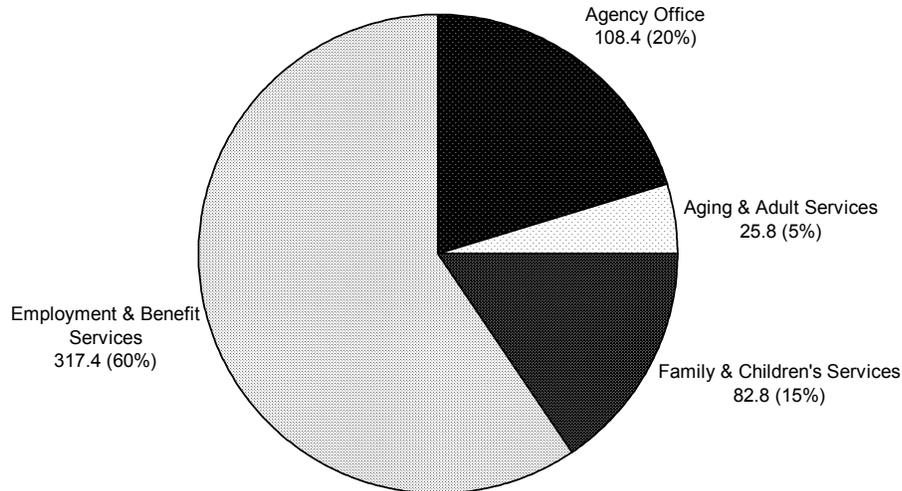
1. Division Chief of Economic Crimes Division, San Diego County 18 Nov. 2004
2. Deputy Director of Health and Human Services Agency, San Diego County 4 Jan. 2005
3. District Attorney, Santa Clara County 15 Mar. 2005

Appendix A

SANTA CLARA COUNTY SSA GROSS APPROPRIATIONS AND STAFFING

Social Services Agency Gross Appropriations and Staffing								
SSA Division	Gross Appropriations (millions)			Staffing				
	FY 03	FY 04	FY 05*	FY 01	FY 02	FY 03	FY 04	FY05*
Agency Office	\$106.9	\$108.4	\$104.8	394	492	482	373	328
Dept of Aging and Adult Services	\$76.2	\$25.8	\$24.3	895	920	911	840	792
Dept of Family and Children's Services	\$83.7	\$82.8	\$165.1	1356	1269	1219	1139	1184
Dept of Employment and Benefit Services	\$304.3	\$317.4	\$236.5	250	273	264	243	222
Totals	\$571.1	\$534.4	\$530.7	2895	2954	2876	2595	2526
			* proposed	Source: Santa Clara County proposed FY 2005 budget				

FY 2004 Social Services Agency Gross Appropriations (\$534 Million)



Appendix B

EXCERPT FROM SMITH V. BOARD OF SUPERVISORS

104 Cal.App.4th 1104, at 1109 (2002)

(All sections refer to Welfare and Institutions Codes unless otherwise indicated.)

The CalWORKs program is administered by the counties under the supervision of the State Department of Social Services (DSS). (§§ 10550, 10600.) The state is responsible "for maintaining uniformity in the public social service programs" (§ 11050.) DSS adopted regulations and standards to implement the program. These appear in the manual of policies and procedures (MPP); they are not included in the California Code of Regulations. (§ 10554.) Section 40-101 of the MPP sets out the general policies and principles.

Section 11055 of the statute provides: "The county shall promptly investigate all applications for public assistance as prescribed by the regulations [104 Cal.App.4th 1110] of the department." MPP section 40-101.17 provides: "Applications for public assistance are to be reviewed promptly in accord with regulations prescribed by the State Department of Social Services" Section 11209 provides that the rules and regulations are binding on the county welfare departments. Under the MPP, each county is obligated to establish special investigative units (SIU's) for the purpose of investigating suspected welfare fraud, particularly during intake. (MPP §§ 20-007.1, 20-007.31.) The SIU is to be a separate organization "independent of organizations performing eligibility and benefit determination functions." (MPP § 20-007.21.)

The MPP provides that the SIU is to "[c]onduct all investigations in compliance with due process of law and so as not to infringe upon the constitutional rights of applicants/recipients. Home visits for the purposes of investigation may be made during reasonable hours of normal family activity. Mass or indiscriminate home visits are prohibited... Search of premises or removal of physical items of evidence of fraud is prohibited without a valid legal process or the permission of the applicant or recipient upon full appraisal of the applicant's or recipient's rights." (MPP § 20-007.33.)

Section 40-161 of the MPP also addresses home visits: "A home visit prior to approval of aid ... is required when living arrangements or other factors affecting eligibility, or apparent eligibility in cases of immediate need or diversion, cannot be satisfactorily determined without such a visit."

Appendix C

WELFARE FRAUD SPECIAL INVESTIGATIVE UNITS

July – September 2004

Below is a listing of the locations of each county's Welfare Fraud Special Investigative Unit(s). The data are from the State of California Health and Human Services Agency, Department of Social Services Data Systems and Survey Design Bureau.

County	County Welfare Department	District Attorney's Office	County Welfare Dept. & District Atty's Office	Sheriff's Office
Statewide	26	21	9	2
Alameda			✓	
Alpine	✓			
Amador			✓	
Butte		✓		
Calaveras			✓	
Colusa		✓		
Contra Costa			✓	
Del Norte		✓		
El Dorado	✓			
Fresno		✓		
Glenn	✓			
Humboldt	✓			
Imperial		✓		
Inyo		✓		
Kern		✓		
Kings	✓			
Lake				✓
Lassen				✓
Los Angeles			✓	
Madera		✓		
Marin	✓			
Mariposa	✓			
Mendocino	✓			
Merced		✓		
Modoc		✓		
Mono		✓		
Monterey			✓	
Napa	✓			
Nevada	✓			

Appendix C – (cont'd)

**WELFARE FRAUD SPECIAL INVESTIGATIVE UNITS
July – September 2004**

County	County Welfare Department	District Attorney's Office	County Welfare Dept. & District Atty's Office	Sheriff's Office
Orange		✓		
Placer	✓			
Plumas	✓			
Riverside	✓			
Sacramento	✓			
San Benito	✓			
San Bernardino	✓			
San Diego		✓		
San Francisco			✓	
San Joaquin		✓		
San Luis Obispo	✓			
San Mateo	✓			
Santa Barbara		✓		
Santa Clara		✓		
Santa Cruz	✓			
Shasta		✓		
Sierra	✓			
Siskiyou		✓		
Solano	✓			
Sonoma	✓			
Stanislaus	✓			
Sutter			✓	
Tehama		✓		
Trinity	✓			
Tulare		✓		
Tuolumne	✓			
Ventura		✓		
Yolo			✓	
Yuba	✓			

Appendix D

CDSS CalWORKs Fraud Investigations by SIUs

Page 1

Selective Summary of CDSS CalWORKs Fraud Investigation Reports for 12 months from Oct. 2003 through Sept. 2004 (source: Quarterly Reports for Oct-Dec03, Jan-Mar04, Apr-Jun04, & Jul-Sep04)

Part 1 -- Counties Alameda through Nevada

County	CalWORKs Caseload	Investigation Requests Accepted			Total Cases with Suff. Evidence for Fraud	Fraud Overpayment Identified			
		average cases per month	total cases for 12 months	Monthly Average		total dollars for 12 months	\$ per average caseload	\$/case with suff. evidence	
				requests accepted					as % of caseload
Statewide	497,485	145,569	12,131	2.44%	54,238	\$21,879,491	\$44	\$403	
Alameda	18,538	2,816	235	1.27%	1,421	\$1,561,257	\$84	\$1,099	
Alpine	15	4	0	2.22%	0	\$0	\$0	\$0	
Amador	257	208	17	6.75%	71	\$10,250	\$40	\$144	
Butte	4,055	1,238	103	2.54%	566	\$185,325	\$46	\$327	
Calaveras	391	630	53	13.43%	185	\$2,539	\$6	\$14	
Colusa	196	40	3	1.71%	4	\$0	\$0	\$0	
Contra Costa	8,512	1,458	122	1.43%	851	\$345,148	\$41	\$406	
Del Norte	864	105	9	1.01%	47	\$31,053	\$36	\$661	
El Dorado	1,022	288	24	2.35%	116	\$48,055	\$47	\$414	
Fresno	24,297	1,652	138	0.57%	473	\$434,522	\$18	\$919	
Glenn	484	518	43	8.93%	116	\$45,965	\$95	\$396	
Humboldt	1,951	509	42	2.17%	192	\$52,594	\$27	\$274	
Imperial	4,015	735	61	1.53%	481	\$19,118	\$5	\$40	
Inyo	131	15	1	0.96%	9	\$0	\$0	\$0	
Kern	17,312	5,623	469	2.71%	3,179	\$632,276	\$37	\$199	
Kings	2,608	2,004	167	6.40%	505	\$92,599	\$36	\$183	
Lake	1,442	476	40	2.75%	264	\$18,125	\$13	\$69	
Lassen	471	375	31	6.64%	68	\$28,313	\$60	\$416	
Los Angeles	170,703	31,102	2,592	1.52%	9,417	\$4,325,449	\$25	\$459	
Madera	3,233	2,462	205	6.35%	251	\$123,390	\$38	\$492	
Marin	920	180	15	1.63%	101	\$43,963	\$48	\$435	
Mariposa	198	38	3	1.60%	13	\$17,512	\$89	\$1,347	
Mendocino	1,513	359	30	1.98%	288	\$255,034	\$169	\$886	
Merced	6,424	1,669	139	2.17%	956	\$261,448	\$41	\$273	
Modoc	231	132	11	4.76%	26	\$479	\$2	\$18	
Mono	59	10	1	1.42%	4	\$0	\$0	\$0	
Monterey	4,844	949	79	1.63%	132	\$78,512	\$16	\$595	
Napa	481	110	9	1.91%	53	\$25,196	\$52	\$475	
Nevada	577	82	7	1.18%	51	\$25,601	\$44	\$502	

Appendix D – (cont'd.)
CDSS CalWORKs Fraud Investigations by SIUs
Page 2

Selective Summary of CDSS CalWORKs Fraud Investigation Reports
for 12 months from Oct. 2003 through Sept. 2004
(source: Quarterly Reports for Oct-Dec03, Jan-Mar04, Apr-Jun04, & Jul-Sep04)

Part 2 -- Counties Orange through Yuba

County	CalWORKs Caseload	Investigation Requests Accepted			Total Cases with Suff. Evidence for Fraud	Fraud Overpayment Identified		
		average cases per month	total cases for 12 months	Monthly Average		total dollars for 12 months	\$ per average caseload	\$/case with suff. evidence
	requests accepted			as % of caseload				
Statewide	497,485	145,569	12,131	2.44%	54,238	\$21,879,491	\$44	\$403
Orange	18,463	9,565	797	4.32%	5,586	\$1,167,939	\$63	\$209
Placer	1,330	173	14	1.08%	49	\$159,811	\$120	\$3,261
Plumas	164	96	8	4.88%	59	\$5,059	\$31	\$86
Riverside	20,755	19,355	1,613	7.77%	3,649	\$770,538	\$37	\$211
Sacramento	28,709	5,836	486	1.69%	3,389	\$2,686,013	\$94	\$793
San Benito	679	110	9	1.35%	74	\$58,791	\$87	\$794
San Bernardino	36,030	14,621	1,218	3.38%	5,346	\$191,531	\$5	\$36
San Diego	24,681	14,671	1,223	4.95%	4,747	\$1,464,343	\$59	\$308
San Francisco	6,277	1,277	106	1.70%	1,058	\$478,909	\$76	\$453
San Joaquin	13,331	734	61	0.46%	505	\$541,510	\$41	\$1,072
San Luis Obispo	1,721	568	47	2.75%	331	\$106,895	\$62	\$323
San Mateo	2,557	828	69	2.70%	230	\$89,072	\$35	\$387
Santa Barbara	4,120	625	52	1.26%	312	\$192,892	\$47	\$618
Santa Clara	14,581	2,127	177	1.22%	861	\$1,983,106	\$136	\$2,303
Santa Cruz	1,901	1,716	143	7.52%	150	\$57,780	\$30	\$385
Shasta	3,341	1,086	91	2.71%	908	\$228,785	\$68	\$252
Sierra	32	23	2	5.94%	4	\$6,814	\$211	\$1,704
Siskiyou	855	1,009	84	9.83%	619	\$291,000	\$340	\$470
Solano	4,481	4,444	370	8.26%	1,708	\$675,285	\$151	\$395
Sonoma	2,811	596	50	1.77%	403	\$199,643	\$71	\$495
Stanislaus	8,950	1,808	151	1.68%	1,172	\$529,116	\$59	\$451
Sutter	1,102	1,152	96	8.71%	551	\$58,986	\$54	\$107
Tehama	1,255	430	36	2.86%	80	\$0	\$0	\$0
Trinity	204	109	9	4.45%	7	\$871	\$4	\$124
Tulare	12,812	889	74	0.58%	156	\$879,289	\$69	\$5,636
Tuolumne	635	636	53	8.35%	364	\$46,658	\$74	\$128
Ventura	5,808	1,627	136	2.33%	633	\$69,734	\$12	\$110
Yolo	2,226	681	57	2.55%	236	\$169,215	\$76	\$717
Yuba	1,935	2,990	249	12.88%	1,211	\$106,183	\$55	\$88

Appendix E

STATE SENATE BILL 786

SEC. 2. Section 11250.5 is added to the Welfare and Institutions Code, to read:

11250.5. (a) Within 10 days of an applicant's preliminary approval for aid under this chapter, the district attorney's office in the applicant's county of residence shall arrange a home call pursuant to subdivision (b) and shall report its findings to the appropriate county officials prior to the final approval of aid for the applicant:(b) The home call required by this section shall be conducted by an investigator authorized by the department at the applicant's residence, as indicated on the application for assistance. The home call shall consist of a brief interview of the applicant and walkthrough of the residence. The investigator conducting the home call shall take at least all of the following criteria under consideration:

- (1) Whether the applicant actually lives at the residence.
- (2) Whether there are paycheck stubs or other evidence of unclaimed income present in the residence.
- (3) Whether there are other assets at the residence.
- (4) Whether the applicant has any residency or criminal history problems that would prohibit the receipt of aid.
- (5) Whether a claimed absentee parent is actually living at the residence.
- (6) Whether there is evidence, such as diapers or other child care items, to confirm the presence of children claimed to reside with the applicant.
- (7) Whether collateral contacts with landlords, neighbors, and school officials corroborate the information provided in the application.
- (8) Any other relevant criteria established by the district attorney.