

Executive Director
Robert C. Fellmeth

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

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



Children's Advocacy Institute



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

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

Reply to: San Diego Sacramento

www.caichildlaw.org

Senator Mark Leno, Chair
Senate Budget Committee
State Capitol
Sacramento, CA 95814

May 8, 2012

Re: Child Health and Safety Fund

Dear Senator Leno:

The Children's Advocacy Institute (CAI), at the University of San Diego School of Law, has for over 20 years worked to improve the health and well-being of children through regulatory, legislative, and judicial advocacy, research, and public education programs.

We have been informed that the proposed budget includes a redirection of funds from the Child Health and Safety Fund to accomplish a "savings" by feeding it into Department of Social Service (DSS) general administration and activities. The monies in this Fund come primarily from "Kids' Plates," the license plates with the star, heart, plus sign or hand that drivers can opt to purchase for extra money. Historically, these revenues financed increased child care home inspections, child abuse prevention or injury prevention through DSS or the Department of Public Health. The funds have been guided by Welfare and Institutions Code Sections 18285 and 18285.5, specifying the types of abuse and injury prevention programs to be funded.

CAI was the sponsor of the legislation that created Kids' Plates and the Child Health and Safety Fund. We were told at the time that our bill to increase child care home inspections required a funding source. The Child Health and Safety Fund was that new funding source, and we added it to the bill over stiff opposition (*see* AB 3087 (Speier), Chapter 1316, Stats. of 1992). In addition to providing funds to increase home inspections, AB 3087 authorized part of the proceeds to be used for 11 specific categories of child abuse and injury prevention spending. Our bill also authorized DSS to impose civil penalties against homes that violated safety standards. Previously, the remedy available was either a warning or license revocation, with nothing in between. This civil penalty reform created graduated enforcement and we achieved its passage over the opposition of the child care industry.

Even with this additional funding source, today we find that DSS child care home inspections are down to once every five years—if that. And now the budget proposes to add injury to insult by taking \$501,000 of Kids' Plates revenue voluntarily paid by Californians for a specific purpose and diverting it to achieve "General Fund savings." This is budget-speak for supplanting or diverting the monies from enumerated purposes to instead pay for accounts that are supposed to be General Fund financed. The term of art for this gamesmanship is "supplantation"—the diversion of funds from

purpose “A” to fund General Fund accounts, thus reducing the monies needed from the General Fund. As a co-author of the *California Children’s Budget* from 1992 to 2004, this is a regrettably common mechanism to divert funds promised for one purpose into General Fund reduction (*i.e.*, the effective cancellation of the funds’ previously intended or stated purpose).

That the State of California is looking to the Child Health and Safety Fund to help resolve its budget shortfall is disheartening. The total Fund expenditure is about \$4 million a year—not even 1/10th of one percent of the projected budget shortfall. And while the \$501,000 to be diverted in this budget proposal is certainly not a large sum, if it is used for its original purpose it will have significance and impact far beyond its amount.

These are not General Fund monies over which the Legislature has discretion. They are arguably more sacrosanct in their allocation than are special fund monies, for they are voluntary contributions solicited by the state—and that solicitation involves promises. Some of those promises are embodied in statute:

“The revenue derived from the additional special fees provided in this section, less costs incurred by the department, the Department of the California Highway Patrol, and local law enforcement for developing and administering this license plate program pursuant to this section, shall be deposited in the Child Health and Safety Fund, created pursuant to Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, and, when appropriated by the Legislature shall be available for the purposes specified in that chapter” (Vehicle Code § 5072(e)).

“It is the intent of the Legislature that the additional special fees specified in subdivision (e) are not used to replace existing appropriation levels in the 1991-92 Budget Act” (Vehicle Code § 5072(f)).

This Fund is not to be raided, nor supplanted, to feed previous General Fund sourced DSS administration and activities.

It may be argued that the statutory provisions may be changed to accommodate the capture of these funds for General Fund “savings.” But the funds being proposed for diversion have already been voluntarily paid by the public based upon promises made by the state. Those promises are set forth in the state’s various solicitations and advertisements, which include the following:

“The fees collected from the Kids License Plates are deposited in the Child Health and Safety Fund and used for programs that will help keep California kids safe through injury prevention efforts” (see <http://www.dmv.ca.gov/online/elp/elp.htm>).

“Kids’ Plates are the *only* DMV license plates that protect California kids — the proceeds from their sale provide funding for local child safety programs throughout the state” (see <http://www.kidsplates.org/>).

“Where does the money go after I purchase a Kids’ Plate?”

Proceeds go into a special Children’s Health and Safety Fund. Proceeds are then distributed to child injury prevention (25¢ of every dollar), child abuse prevention (25¢ of every dollar), and child care health and safety programs (50¢ of every dollar)” (see <http://www.kidsplates.org/Kids%20Plate-%20FAQ.pdf>).

That is how the money must be used, and a violation of the promise to those who so paid is an abuse of discretion that we believe would be remediated properly through a petition for writ of mandamus under Code of Civil Procedure § 1085. Ironically, the cost of defending such a lawsuit will undoubtedly exceed the sum proposed for misdirection here. But there is a regrettably related precedent here that should influence your decision to support or reject. For nine years I served as a white collar crime prosecutor in California, and am co-author of *California White Collar Crime* (w/ Papageorge, 3d edition, 2011, Tower). Any person who solicits money based on a stated expenditure, and then diverts it to some other use may violate the *raison d'être* of felony embezzlement. Without excessive melodrama, that is not an example any official of the state of California should want to emulate. Granted, it might be possible to simply change the messages in the state's solicitations. But one wonders how attractive such an accurate appeal might be: "The money you voluntarily contribute for this license plate personalization will no longer go to a child safety fund, but will instead be used to subsidize the General Fund or used for other purposes in lieu of higher taxation." This appeal might not maximize voluntary purchases from Californians. Even if one were to change the promises now made, many thousands of Kids' Plates have been purchased over the past 20 years by Californians who relied on the promises quoted above—including the one on my own car. It is not advisable to change the rules of the game that would apply not only to new Kids' Plates purchasers but to the thousands of renewals of those who read and believed that the funds would be spent as promised.

Your record of integrity and concern for children is an enviable one. We ask that you maintain your standards and reverse or stop any attempt to divert these funds from their promised expenditure. The Legislature has enacted numerous statutes to police deceptive practices in advertising (*see, e.g.*, Bus. & Prof. Code §§ 17200, 17500, *et al.*). I spent nine years enforcing these statutes as a public official. I believe that you and your colleagues as public officials would not want to come close to their violation after the state has advertised what it will do with consumer purchases of its products.

Very Sincerely,



Robert C. Fellmeth
Price Professor of Public Interest Law
University of San Diego School of Law

cc: Senate Budget Committee Members
Assembly Member Bob Blumenfield
Gov. Jerry Brown