



National Association of Public
Child Welfare Administrators

an affiliate of the American Public Human Services Association

CAPTA Access to Information Regulations Frequently Asked Questions

Confidentiality

1. What are the CAPTA confidentiality requirements?

In general, CAPTA requires States to preserve the confidentiality of all child abuse and neglect reports, but there are some exceptions:

-State **must** provide otherwise confidential child abuse and neglect information to:

- a. Any Federal, State, or local government entity, or agent of such, that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect
- b. Child abuse citizen review panels
- c. The public, in cases where child abuse or neglect resulted in a child fatality or near fatality
- d. Child fatality review panels

-State **may** provide otherwise confidential child abuse and neglect information to:

- a. The subjects of the report
- b. A grand jury or court, when necessary to determine an issue
- c. Other entities or classes of individuals who are authorized by statute to receive information pursuant to a legitimate State purpose
- d. State's have the option of allowing public access to court proceedings that determine child abuse and neglect cases, so long as the State can ensure the safety and well-being of the child, parents, and families

2. Would legislation that protects the identity of the reporter, but would otherwise open child abuse and neglect reports and records to the public, meet the confidentiality provisions?

In general, no, such broad public access would not be consistent with CAPTA. However, there are two situations in which information in child abuse and neglect reports may be shared with the public:

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- a. State **must** release findings in cases of fatality or near fatality
- b. State **may** open court proceedings that determine child abuse and neglect to the public

3. Do States have the authority to release otherwise confidential child abuse and neglect information to researchers for the purpose of child abuse and neglect research?

Yes, States can do this in either of two ways:

- a. The CPS agency may contract with a researcher, thereby making the researcher its agent
- b. States may statutorily authorize release of such information to researchers as a legitimate State purpose

4. Is there a prohibition against re-disclosure of confidential child abuse and neglect information?

Yes, authorized recipients of otherwise confidential CPS information are bound by the same confidentiality restrictions as the CPS agency.

5. Will States compromise compliance with titles IV-B and IV-E of the Social Security Act if they comply with the confidentiality requirements of CAPTA?

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and confidentiality requirements under title IV-E. In the event of a conflict, the CAPTA disclosure provisions would prevail since the CAPTA confidentiality provisions were most recently enacted.

However, where the CAPTA provision is permissive, it allows States to disclose such information, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

6. Do the confidentiality requirements in CAPTA apply to the members of the citizen review panels?

Yes, citizen review panel members are bound by CAPTA's confidentiality restrictions.

7. Is it permissible under CAPTA for the State to disclose to the public information in the child abuse and neglect record that does not pertain to the case of child abuse and neglect that results in a child fatality or near fatality?

Generally, no. However, a State may open court proceedings that determine child abuse and neglect to the public if the safety and well-being of the child, parents, and families involved are protected.

Expungement

1. How will States be able to determine whether a pattern of abuse or neglect exists if unsubstantiated records must be expunged? While the statute allows these records to be

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kept in casework files, if the files are not maintained in a central location, previous unsubstantiated report(s) may go undetected if a subsequent report comes into another office, or even another worker.

While CAPTA requires prompt expungement of records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated, it also allows CPS agencies to retain information on unsubstantiated reports in their casework files. A State could still choose to implement a system which would consider an unsubstantiated case “expunged” for any purpose other than investigation of a new report.

2. How does the CAPTA expungement requirement affect States that have a three-tier system which includes a middle category that indicates a reasonable basis for concern?

This requirement relates only to unsubstantiated or unfounded cases and would not affect retention of records for a middle category which indicates that there is reason to suspect that child abuse or neglect has occurred.

Open Courts

1. Would there be a conflict with CAPTA confidentiality requirements if a State chose to open proceedings relating to child abuse and neglect to the public?

No, as long as such policies ensure the safety and well-being of the child, parents, and families. Although, other Federal confidentiality restrictions must also be taken into account for the State to consider open proceedings.

2. How widely should the “open courts” provision be applied considering the “open courts” provision in title IV-E of the Social Security Act?

The “open courts” provision in CAPTA applies to court proceedings that determine whether child abuse and neglect has occurred. However, section 471(c) of the SSA permits States to provide the public with access to court proceedings that determine child abuse and neglect, or other court hearings held pursuant to titles IV-B or IV-E. Since this later-enacted law allows open courts in a broader range of court proceedings, a State may allow open courts in any of the proceedings authorized by section 471(c) of the Act and not be considered out of compliance with CAPTA.

Public Disclosure

1. CAPTA requires States to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. For this requirement, what is considered a “near fatality”?

A “near fatality” is defined under section 106 as “an act that, as certified by a physician, places the child in serious or critical condition”.

2. The requirement for public disclosure states that “findings or information” about a case must be disclosed. Does this mean that States have the option to disclose either the findings

of the case, or information which may be general in nature and address such things as practice issues rather than provide case specific information?

No, as with the use of the other “or’s” in this provision, the language is understood to be inclusive and not limiting. Specifically, the reference to “findings or information” requires the disclosure of information, even if there are no findings.

3. If a State’s child fatality review panel publishes an annual report that includes information, findings, and recommendations on each case, and this report is made public, does this process meet CAPTA’s requirement for public disclosure of findings or information about cases of child abuse or neglect that result in child fatality or near fatality?

Yes, this would meet the CAPTA requirement.

4. Does a State have the option of disclosing information on child fatalities and near fatalities, for example, when full disclosure may be contrary to the best interests of the child, the child’s siblings, or other children in the household?

No, the State is not required to provide the information to the public unless requested, but it *may not* withhold the facts about a case unless doing so would jeopardize a criminal investigation.

5. Is the State required to turn over all of the information in the case record, when requested, in cases of child abuse or neglect that result in child fatality or near fatality?

No, the State must provide for the disclosure of the “available facts” in such situations. The State may determine its procedures in accordance with these parameters, and can release the full investigation; a summary of the investigation; or a statement of findings or available facts about the incident among other options.

6. In a case of child abuse or neglect that results in a child fatality or near fatality, is the State required by Federal law to disclose to the public personal information about the child, including name, date of birth, and date of death?

No, CAPTA only requires the State to release the public findings or information about a case of child abuse or neglect that results in a child’s death or near fatality; disclosure of name, date of birth, date of death, or other personal information is not a Federal requirement. However, a State is not prohibited by CAPTA from having procedures or policies that release such information.

7. In a case of child abuse or neglect that results in child fatality or near fatality, is the State required to provide information on the child’s siblings, or other children in the household?

No, the information about another child in the household who is not a fatality or near fatality victim is not subject to the CAPTA public disclosure requirement, and may be protected by the confidentiality requirements applicable to titles IV-B/IV-E of the SSA.