

Child Welfare Policy Manual

February 27, 2023

Questions & Answers

2.1A.1 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Confidentiality

1. Question: What are the Child Abuse Prevention and Treatment Act (CAPTA) confidentiality requirements?

Answer: In general, CAPTA requires that a State preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and the child's parents or guardians (section 106(b)(2)(B)(viii) of CAPTA). However, CAPTA allows the State to release information to certain individuals and entities.

The State *may* share confidential child abuse and neglect reports and records that are made and maintained in accordance with CAPTA with any of the following:

- Individuals who are the subject of a report (section 106(b)(2)(B)(viii)(I));
- A grand jury or court, when necessary to determine an issue before the court or grand jury (section 106(b)(2)(B)(viii)(V)); and
- Other entities or classes of individuals who are authorized by statute to receive information pursuant to a legitimate State purpose (section 106(b)(2)(B)(viii)(VI)).

In addition, States have the option to allow public access to court proceedings that determine child abuse and neglect cases, so long as the State, at a minimum, can ensure the safety and well-being of the child, parents and families (see the last paragraph of section 106(b)(2) of CAPTA).

The State must provide certain otherwise confidential child abuse and neglect information to the following:

- Any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect (permitted by 106(b)(2)(B)(viii)(II) but required by section 106(b)(2)(B)(ix));
- Child abuse citizen review panels, if such panels are established to comply with section 106(c) of CAPTA (permitted by 106(b)(2)(B)(viii)(III) but required by section 106(c)(5)(A));
- Public disclosure of the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality (required by section 106(b)(2)(B)(x)), in accordance with section 2.1A.4, Q/A #8 of the CWPM; and
- Child fatality review panels. Although disclosure to such panels is merely permissible under the language of section 106(b)(2)(B)(viii)(IV), section 106(b)(2)(B)(x) of CAPTA requires disclosure of findings or information about the case of child abuse or neglect that results in a child fatality or near fatality. Accordingly, disclosure to a child fatality review panel is required.

Authorized recipients of confidential child abuse and neglect information are bound by the same confidentiality restrictions as the child protective services agency. Thus, recipients of such information must use the information

only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; updated 9/12/12
- **Legal and Related References:** CAPTA section 106(b)(2)(B) and 106(c)(5)(A)

2. Question: 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 section 106 (b)(2)(B)(viii) of the Child Abuse Prevention and Treatment Act (CAPTA)?

Answer: In general, such broad public access to child abuse and neglect reports and records is not consistent with CAPTA. States must preserve the confidentiality of all reports and records in order to protect the rights of the child and the child's parents or guardians, except in certain specified circumstances.

There are two circumstances in which information contained in child abuse and neglect reports and records, which are typically kept confidential, may be shared with the public. First, a State *must* release findings or information to the public about a case of child abuse or neglect which results in a child's death or near fatality consistent with section 106(b)(2)(B)(x) of CAPTA and in accordance with section 2.1A.4, Q/A #8 of the CWPM. Additionally, a State may open court proceedings that determine child abuse and neglect to the public (see the last paragraph of section 106(b)(2) of CAPTA).

There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; 9/12/12
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2) and 106(b)(2)(B)

3. Question: 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?

Answer: Yes. Consistent with section 106(b)(2)(B)(viii)(II) and (VI) of CAPTA, States have authority to release information to researchers of child abuse and neglect in either of two ways: (1) the CPS agency may contract with a researcher, thereby making the researcher its "agent;" or (2) States may statutorily authorize release of such information to researchers as a legitimate State purpose, since research involving data in CPS records can provide important information that will help government officials plan programs for abused and neglected children and develop future policy directions.

- **Source/Date:** ACYF-NCCAN-PIQ-97-04 (3/4/97); updated 9/27/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(viii)

4. Question: The confidentiality provision at section 106(b)(2)(B)(viii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires that States have a State law or operate a statewide program that includes methods to preserve the confidentiality of all child abuse and neglect records and reports and provides for exceptions in certain circumstances. The statutory language states that such records "shall only be made available to" a specified list of

persons and entities. Are States required to disclose child abuse and neglect records to the persons and entities enumerated in subsections (I)-(VI) under section (viii)?

Answer: In general, States are permitted, but not required, to disclose otherwise confidential information to the persons or entities in the enumerated categories in subsections (I)-(VI) under section (viii). However, the disclosure described in subsections (II), (III) and (IV), is required by subsequent provisions in CAPTA. Specifically, subsection (ix) requires disclosure to any Federal, State or local entity, or agent of such entity, that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect, so that disclosure as described under subsection (viii)(II) is mandatory. Likewise, in accordance with section 106(c)(5)(A), the State must provide a citizen review panel with access to information on cases that the panel needs to review if the information is necessary for the panel to carry out its functions. Further, section 106(b)(2)(B)(x) of CAPTA requires States to allow for public disclosure of the findings or information of the case of child abuse or neglect that results in a child fatality or near fatality. Thus, the disclosure described in subsection (viii)(IV) also is required. Otherwise, States are permitted, but not required, to disclose information to the persons or entities in the enumerated categories.

There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2)(B)(viii) and (b)(2)(B)(x)

5. Question: Is there a prohibition against redisclosure of confidential child abuse and neglect information?

Answer: Yes. Authorized recipients of otherwise confidential child protective services (CPS) information are bound by the same confidentiality restrictions as the CPS agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 2/3/05
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

6. Question: Will States compromise compliance with titles IV-B and IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106(b)(2)(B)(viii), (ix) and (x) of CAPTA?

Answer: Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under both title IV-E and IV-B (both of which are subject to the Department's confidentiality provisions in 45 CFR 205.50) are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs.

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106(b)(2)(B)(ix) to other governmental entities and in section 106(b)(2)(B)

(x) in the case of a child fatality or near fatality), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. However, where the CAPTA provision is permissive (such as in sections 106(b)(2)(B)(viii)(I), (V) & (VI)), it allows States to disclose such information without violating CAPTA, 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.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11; 9/12/12
- **Legal and Related References:** Social Security Act - sections 471 (a)(8) and (c); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50, 45 CFR 1355.21 (a)

7. Question: Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

Answer: Citizen review panel members are bound by the confidentiality restrictions in section 106 (c) (4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

- **Source/Date:** ACYF-CB-PI-98-01 (1/7/98); updated 2/3/05
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(c)

8. Question: Is it permissible under the Child Abuse Prevention and Treatment Act (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?

Answer: No. Except as discussed below, States must preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and family. Consistent with section 106(b)(2)(B)(viii) of CAPTA, reports and records made and maintained pursuant to the purposes of CAPTA shall be made available only to the entities and under the circumstances described in section 106(b)(2)(B)(viii)(I - VI) of CAPTA.

As the question implies, a State must release findings or information to the public about a case of child abuse or neglect which results in a child's fatality or near fatality consistent with section 106(b)(2)(B)(x) of CAPTA in accordance with section 2.1A.4, Q/A #8 of the CWPM. In addition, 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 (see the last paragraph of section 106(b)(2) of CAPTA).

- **Source/Date:** updated 9/27/11; 9/12/12
- **Legal and Related References:** Child Abuse Prevention and Treatment Act section 106(b)(2)

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